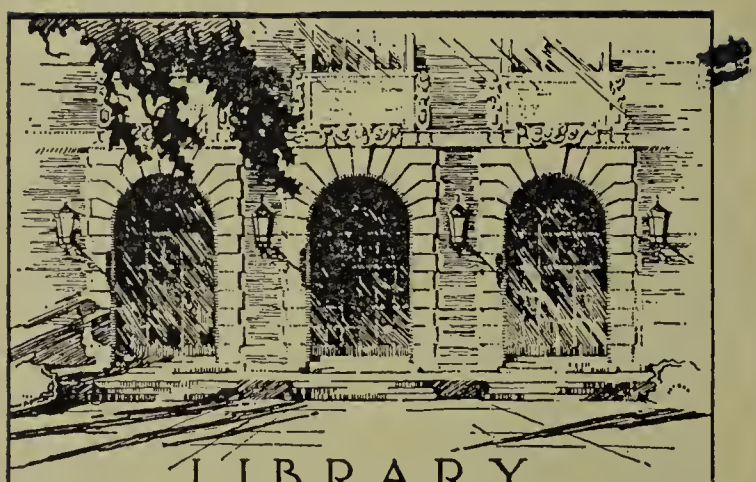
X341.3
W195

War without Disguise; or The Frauds of Neutral Commerce... with Observations on the Answer to War in Disguise, and Mr. Madison's Examination....1807.



LIBRARY
OF THE
UNIVERSITY
OF ILLINOIS

X341.3
W195

ILLINOIS HISTORICAL SURVEY

WAR WITHOUT DISGUISE;

OR,

THE FRAUDS

OF

NEUTRAL COMMERCE

A JUSTIFICATION OF BELLIGERENT CAPTURES;

WITH OBSERVATIONS

ON THE

ANSWER TO WAR IN DISGUISE,

AND

MR. MADISON'S EXAMINATION.

SHOWING THAT THE TRUE INTERESTS OF AMERICA REQUIRE THE RIGID APPLICATION OF THE BRITISH RULE OF '56.

PRINTED IN AMERICA.

1807.

341.3
W195

ADVERTISEMENT.

THE reader will please to observe, that by the word "fraud," used in the title page, and as it is in general argued against, legal and not actual fraud is meant; such as arises from construction of law, and may be committed without any imputation of moral turpitude. Should a man buy the household goods of another, and after having *bona fide* paid for them, let them, from motives of pure compassion, remain in his possession, the vendee would not be able to protect his right, against the claim of a creditor who should sue out an execution against the property of the vendor, because the law would impute fraud to him in having left the goods in the hands of the person from whom they were bought.

It is against this species of fraud that the reasoning of the following sheets is principally directed, though it does incidentally argue from a knowledge of actual, and wilful fraud in the prosecution of neutral commerce. The well-meaning trader, who really purchases and pays for, with his own funds, belligerent colonial produce, is requested to exculpate the author from all design of accusing him of dishonest practices.

46229

With the positions of War in Disguise, the Answer to it, and Mr. Madison's Pamphlet, it is presumed every one is well acquainted. Should those of the little tract now published be assailed, they may, if deemed in danger, be defended. The manner in which they are delivered, style, &c. will never be thought worthy of protection. To maintain the sense alone will, if correct, be attempted. Should it be shown erroneous, it will instantly be acknowledged.

WAR WITHOUT DISGUISE.

WHETHER belligerents have, by the law of nations, a right to prevent neuters from carrying on, with a hostile colony, all trade, which was not authorised in time of peace, is a question that seems to have awakened the interest, and, at one period, to have almost engrossed the attention, of the American people. To arrive at a just solution, we ought not to investigate the claim with a desire, either to its establishment, or subversion. If the principles on which the title is founded be correct, it should, without reluctance, be acknowledged; and, only in case they should be the reverse, ought it to be denied.

The temper, however, with which this subject has been agitated, gives the writer of these sheets little hopes to flatter himself with such a result. He fears, lest, misled by the dazzling prospects of a transient commerce, we should lose sight of the true road to national welfare; lest, goaded on by interest, we stray from glory; and violating, for the sake of temporary emolument, the eternal principles of justice, fix an indelible stain on the American name. Under these impressions, the ideas in this tract are submitted to the public, not so much as adding that which is new on the topic, as illustrating what has been already advanced. In doing this, some further reasons, than those heretofore assigned, will be given, as conducing

to the English rule of 1756, on the propriety of which the right in contest is allowed to depend, unmodified, as it now is, by compact, in consequence of the rejection, by the President, of the British Treaty.

It will be no argument against these auxiliary reasons, that they are not to be met with, *in totidem verbis*, in any author, ancient or modern. It will be sufficient, if the principles from whence they are deduced, are sanctioned by the universal law of nations, as acknowledged by all writers, in all ages. To ask more, would be to require every text to contain its own comment.

I shall, therefore, without an ostentatious display of learned quotations, shortly state those doctrines, which, it is on all hands conceded, warrant the right of capture. If it can be shown that the trade to which a neuter is, during war, admitted with a hostile colony, comes within the spirit and the letter of those doctrines, it must, as it appears to me, be liable to capture and confiscation, though the consequence should be, not war in, but war without disguise.

Supposing this to be so, I shall then consider how far Great Britain would be justifiable in exercising this power, over the commerce now existing between the colonies of her enemies, and the United States; that is, whether she may not be concluded by her own acts, and whether we may not have some claim on her, for a relaxation of the measure.

I shall then advert to the interests of Great Britain; whether they would instigate her to urge, against America, its unqualified application; after which I propose to add a few words on the interests of America herself, whether *they* require the adoption, or rejection of the rule.

The right of capturing in war is established by the law of nations, in order to obtain compensation for injuries sustained, where redress is denied, and to disable from taking, under a pretence of satisfaction, where none is due.

For these purposes, every thing possessed by belligerents is liable to this right, and constitutes the fund out of which, in the one case, reparation is to be sought, and, in the other, prevention to be secured; subject, however, in both cases, to all existing rights and privileges of third parties.

Whatever may be the occasion of exercising this right of capture is immaterial; the result is invariably the same. In the first moment of war, a perfect right of capture,* reciprocally attaches on every thing possessed by belligerents, to which, or in which, third parties, or neuters, had not, at that time, any claim by way of right or privilege.

Subordinate to such right or privilege, the law of capture may be resorted to. Thus, as an item of that fund from whence indemnity is to be gained, or as a means of disenabling where none is due, the goods of an enemy are liable to seizure by his adversary; but if, antecedent to hostilities, the period in which the right of the belligerent attached, there existed a right in a neuter to purchase those goods, the exercise of that prior right, before capture, would take away the subsequently acquired right of the belligerent to seize.

If, on the other hand, there should be certain goods, which, previous to war, the neuter had not a right to

* As it regards third persons; who, being disqualified from judging on the right, are obliged to admit it: not that a positive moral right exists on both sides.

buy, he cannot, by the exercise of a right to purchase, granted *subsequent* to hostilities, defeat that right of the belligerent to capture, which had *before* accrued.* It follows, therefore, that should goods of the first description, when purchased by a neuter, and in his possession, or that of his agent, be seized by a belligerent, he would, by the law of nations, be bound to restore them; because, his right to capture, was subject to the exercise of the right to buy. So, *vice versa*, goods of the latter kind, if bought under a license to purchase, accorded after war, are, though actually and *bona fide* paid for, obnoxious to confiscation; because the purchase was made, subject to the belligerent's right of capture.

Here it may be said, that as, in the first case, the exercise of the neuter's right to buy, is necessary to take away the belligerent's right to capture; so, in the last, the exercise of the belligerent's right to capture, is necessary to defeat the neuter's right to buy.

The fallacy of the argument consists in using to *subsequent*, the reasoning applicable to *prior* rights, and giving to the former, the qualities of the latter. For, though the exercise of a prior right, which goes to the whole of the subject matter, must necessarily extinguish subsequent claims, in the subject on which it is so exercised, it does not follow, that a previous known claim, not enforced, is defeated by the exercise of a subsequent right. On the contrary, the everlasting rules of justice ordain, that he who buys with notice of an existing claim, must take, incumbered with the charge, whatever he thus acquires. This

* This is one of the sources, from whence the distinction between accustomed, and unaccustomed trade has been derived.

will be more obviously the case, when the acquisition is made in fraud of antecedent demands. It will be in vain to say, the full value has been paid. The purchaser of stolen goods may advance the same argument, with equal propriety.

Let us, however, strip the transaction of every fraudulent motive. Let us suppose the purchase knowingly, but innocently made, and future gain the only inducement. Will this vary the result? Not an atom. Who ever heard of ignorance excusing the law? Where is the code in which, the belief of a right, confers a title? Therefore, *quacunque via data*, whether the emption be with, or without a dishonest view, it would seem, that a license from a belligerent to buy antecedently prohibited merchandise, if obtained by a neuter, after war, cannot take away the right of capture which had previously attached; because, such license, were it available, would destroy prior claims, contrary to the principle, that subsequent claims must be exercised in subordination to prior rights.

This consequence does not ensue from a belligerent's enforcing the law of capture. The neutral right to purchase still continues; for prize articles being held not to come within the description of imported commodities, are therefore not liable to the restrictions of general trade.

But allowing this not to be so, and that the right to purchase, which subsisted antecedent to hostilities, is defeated by the exercise of the right to capture, it cannot, on that account, be urged, that the subsequent right to buy articles, which the neuter could not, before the period of warfare, purchase, would, when put in force, take away the right of capture; because the rights are of different natures.

That of capture is perfect and *vested*, created *a priori*, by operation of law, before any act performed; that of purchase, imperfect and contingent, depending on matter *a posteriori*, is common to all, and, therefore, till appropriation, perfect in none.

To evince that the right of capture is perfect, attaching on the property of a belligerent, and vesting in his opponent a legal interest in the goods, even prior to the subsequent taking, the effect of a sale under it, appears to be conclusive. It passes to the vendee an absolute title against the whole world.

From whence does this arise? Not from the mere capture; but from the antecedent right to the thing taken, which right, the capture, only reduces into possession. In other words, by the right to capture, a right of property is given, and to this, the seizure annexes the possession. Thus, the right of property, and the right of possession, being united in the captor, he obtains a perfect title, which, by the sale under him, is transferred.

The sentence of a court of admiralty is no more than a declaration of the captor's lawful right, which the promulgation does not create, but acknowledge.

The truth of this doctrine is corroborated by considering the different result of a sale under a capture, where there is not a prior right to seize.

If it be under a seizure by a pirate, it conveys no title; because, as his taking is not warranted by a previous right, he, by the capture, acquires a mere possession, the transmission of which, even to a *bona fide* vendee, passes no interest against the original owner. Were it otherwise, every bailee of property, though for a special purpose, might, in violation of his trust, validly transfer.

If the positions laid down with respect to prohibited goods be correct, they may, with equal force, be urged, as to interdicted places.

So, whether the inhibition be partial or general, the reasoning will, to the extent of the prohibition, be the same. From the premises advanced, it therefore follows, that on a war, a right of property, subject to the existing rights of third parties, is, for the sake of indemnity and prevention, given, by the law of nations, to each belligerent, in the goods, &c. of the other; all of which, with the knowledge of the whole world, become objects, or funds for those purposes.

Let us see how these principles will apply to the trade of the United States, with the colonies of belligerent Europe.

Antecedent to hostilities, the citizens of North America enjoyed the right of buying, in the West-Indian settlements of France, rum and molasses. In Spanish America, they had not such a right; for, every port, excepting that of the Havanna, was shut against them; and, even there, the permission to enter was confined only to those vessels which introduced a certain number of negroes.

The right, however, of purchasing the valuable products of these regions, was not wholly interdicted to the American people. They had, in common with other nations, a right of emption, to be exercised in the mother country.

On the breaking out of the present war between Great Britain and her *open* enemies, a right of capture, in favour of the English, attached on all the colonial produce of her adversaries; but, as with respect to neuters, war is a continuation of their former state, this right was liable to be divested, as to rum and mo-

lasses, by the exercise, in the colonies themselves, of the previous right of the Americans to buy ; and as to other articles, by the exercise of the same right in the mother country.

Subordinate to these rights, all the colonial property of the opponents of Great Britain, became funds from whence she was entitled to seek compensation,* and were, therefore, charged with a right of capture.

While known to be thus incumbered, the citizens of the United States accept an offer to sell, and actually buy for a valuable consideration. Must they not, on every principle of law and justice, purchase subject to the lien ? Can they avail themselves of this proffered bounty, the right to buy where, and what they formerly could not, without altering their previous relations, and making their present, cease to be a continuation of their former state ? Is not this a violation of the only principle on which, as neuters, we claim an exemption from the effects of war ? After profaning the sacred rule that would have protected us, how dare we hold up our sacrilegious hands and ask for mercy ? or if, like hardened sinners, actuated by resentment against those we have injured, we arm in support of the wrongs we have done, with what confidence can we appeal to the God of the righteous and the just ?

Here, I am aware, some hasty reasoner may exclaim, "Because the English go to war, are we to be "precluded from all extension of commerce ? Must "our trade be confined within its existing limits, "merely because European nations choose to quar- "rel ? yet these are the necessary consequences of

* Whether one nation or the other be the aggressor, is not a question for neutral discussion.

" your doctrine of prior rights, and continuation of a " former state."

To such I should answer, keep both principles in view, and you will not find this to be the case.

By the first, you are warranted in the exercise of the rights, to which you were, in time of peace, entitled. By these you were authorised to acquire any mercantile privilege, for which you might, under treaty, please to stipulate. You are still enabled to do the same.* Enter into a *fair* treaty with any belligerent, and on the trade sanctioned by that treaty, the law of nations will allow you to insist.

I say a fair treaty, because it must not be a colourable and fraudulent convention, calculated, by its terms and duration, to avoid the right of capture, already accrued.

I say it must not be such, because, from the dirty complexion of our politics, such a treaty, I fear, is not incompatible with our national character.†

In favour of a trade so obtained, acquired in the honourable manner I have suggested, it surely cannot be objected to *me*, if *I* refer to the feelings of honest pride. In support of that which the bounty of France has bestowed, and our meanness has accepted, the advocates for its legality have appealed to the generous foibles of an infant people, and talked of our greatness and independence. Let *me* then ask, whether a commerce gained by rightful means, which we can claim as our own, and enforce according to its

* This may, perhaps, be with reason doubted.

† By this, it is not meant to be insinuated that every American is a dirty fellow, therefore I pray none will take me up on this score; I mean only to say, what, by the bye, can be proved by more ways than Mr. Randolph's speech, that in many parts of our political deportment, we have behaved like a paltry crew.

stipulations, is not to be preferred to one that is enjoyed as the will and caprice of the donor may suggest? that is held out to us only in times of difficulty and distress, as a lure to join in a fraud on another? that is never allowed, but when we condescend to act as tools to those by whom it is permitted? and from which, the instant they are relieved, we are kicked and spurned with every mark of contempt? A trade, that in its prosecution is mixed with perjury upon perjury, and for the possession of which we undergo as many impious indignities as were offered to the Dutch in Japan, when they were forced to tread on the cross.

This description is not the working of a high wrought fancy, but a faithful delineation from long observing, and ocular demonstration. What is the avowed object of this newly granted commerce? To supply the French and Spanish colonies, and transmit, without danger of capture, their produce to Europe; nor is this less the avowed object, because its accomplishment will enrich ourselves.

When is it bestowed on us? When from the superiority of a naval enemy it can no longer be retained.*

When is it taken away? On a peace, or the instant it can, without fear of inconvenience, be resumed.

In what manner is it withdrawn? Without permission to carry away, even what we call our own, and under threats of a French dungeon, or a Spanish mine, if we are caught in its continuance.

With what proposals is it in many, very many instances, accompanied? With offers of a per centage

* I am aware of the revolutionary permission, and the ill-judged deference of the British tribunals.

for false swearing ; an offer, to which we are so accustomed, that, if it be duly worded, and attended with premium enough, is offensive to hardly any counting-house in the union.

Questions, I know, are easily put, and solved with equal facility. Give but the liberty of asking what we please, and answering as we like, proof of any thing may be made. Right. But when the answer arises from the obvious plainness of the question ; when we reply, not as we wish, but as facts compel, the facility of the answer evinces the truth of the response.

Can any man, at all conversant with the trade of which I have been speaking, for a moment doubt the exactitude of every answer ? Does he not know that a neuter, of the most tender conscience, feels no qualm at swearing to property, which he has paid for with his own money, though bought for the use, and on the order of a known belligerent? That the advance of the cash, or a note, aided by a policy of insurance in the neuter's name, are commercial talismans, which never fail of changing agents into principals, though, in case the policy should be unproductive, there do exist a further guarantee ? That with many of less delicacy, the magic operation is far more simple ; the mere purchase, though with belligerent funds, being quite sufficient ? In short, can he be ignorant that in every town, throughout the United States, persons can be found, of no mean consideration, who, by various devices, carry on, under neutral names, commerce, on belligerent accounts? That of this our own tribunals afford, not only complete, but almost daily testimony, though not the

tithe of what might be adduced, is ever exhibited? It is impossible that an intercourse, against which so much may be said, and with so much truth, can be preferred to an honest trade gained by treaty, against which not a syllable can be urged.

But, the practicability of the acquisition may be denied. Believe not the assertion. France and Spain, oppressed with the naval force of Great Britain, cut off from their settlements, and isolated, as it were, in Europe, must relax from the system of colonial monopoly. They must admit their subjects abroad, to a participation of the rights enjoyed by those at home, or forego all mercantile communication between the two. When thus circumstanced, should either the one, or the other of these powers accost us with the proffered bounty of opened ports, we might and ought, with the dignity of an independent people, to say, "We accept of no favours. If the "commodities of our country are necessary to you, "we are willing to negotiate, respecting an exchange "for those of yours, and to settle by treaty, the terms "on which it shall be conducted; but we cannot per- "mit our citizens to engage in a commerce held by "so precarious a tenure, as either your pleasure, or "your necessity."

To such language the want of liberal sentiment can never be imputed. For, from an interested offer, profit may fairly be extracted. Besides, we, like all other states, have a right to annex conditions to the trade we allow, and to procure advantages to our lawful commerce, though at the expense of time-serving beneficence. Good will is not pretended to be the motive for opening colonial ports; kindness, then,

pure and unalloyed, cannot be expected to be the inducement for us to supply.

But have we not in time of peace, a right to avail ourselves of the trade to a port newly opened? Certainly; and whenever the circumstances, which in war occasion the opening a belligerent port, are the same as can operate in peace, we, during war, may do the same.

Thus, if it proceed from a dearth, or any other cause which can arise in time of peace, the subsistence of hostilities between another nation and that whose port is opened, will not take away our prior right. Therefore, vessels employed in relieving the distresses of famine, cannot be interrupted either in their outward, or their homeward voyages. Not in their outward, because it is prosecuted in virtue of a prior right; not in their homeward, because it is the returns of one which was lawful.

Very different is the trade carried on to ports opened in consequence of a scarcity, induced, not by the act of God, but by artificial means; by the maritime preponderance of a naval power, in pursuit of his just right of capture. Here, the cause arising from war itself, can never exist in time of peace. With reason, therefore, do the British say, "You shall not pos-"sess a commerce to which the necessities of war "have given birth; because it flows from our pre-"vious right to capture." With what pretensions can a neuter set up a title derived from such a source? Its very origin is against the claim.

I, however, do not wish that Great Britain now, or hereafter we ourselves, should rest on so uncertain a ground, as the necessities of war, the right of a belligerent to interdict, between neuters and the hostile

colony of its opponent, all commerce which did not subsist in time of peace. Placing it on that footing, is to expose it to everlasting contention; to never ceasing disputes respecting the existence or non-existence, the *plus* or *minus* of the necessity.

I am for settling the doctrine on the firm basis of antecedent rights, so notorious and plain, that they can never be either denied or mistaken. I trust in God, that as Great Britain is the only power who can enforce it, she will speedily do so; not for her sake only, but, as I shall hereafter show, for our own; for the sake of those eternal principles of truth and justice, on which all laws, both of men and of nations, must depend; for the sake of mercy, that the period of warfare may, by multiplying its difficulties, be curtailed; that there may be no temptations to us to deprave our souls, by wishing to prolong the slaughter of mankind; that I may never again hear, what I once did hear given by an American official character as a toast, and drank by the company, "Gentle bleedings to Europe;" that we may get rid of that savage disposition, nurtured by this destructive commerce, which makes us behold with hypocritical lamentation, yet secret joy, each hostile movement, in hopes of fattening on the blood of the world.

From what has been advanced, it will, if the position be correct, necessarily follow, that we have not a right, even to accept from a belligerent, a trade with his colonies in articles, from the purchase of which, we were, before the war, interdicted; that if so accepted, it is, in virtue of the previous right of capture; *vested* in the adversary of the belligerent, liable to seizure in our hands, and may be taken by

him, whether coming from the colony to the United States, or going from the latter to the mother country. For as the articles of that commerce were, when owned by the party from whom we received them, known by us to be incumbered with a claim for compensation, they cannot be acquired, but subject to the existing lien.

There is no principle to warrant, even by a purchase for a full consideration, the idea of extinguishing former claims of which we were apprised. Between man and man, such an attempt would be deemed nefarious. Between nation and nation, it is equally criminal. The rule of justice between states, is the same as that between individuals. What is the law of nations, but the application to a people, of those maxims, which ought to govern in private life? There is not a better mode to ascertain the rectitude of public claims, than to view their operation on private rights. Place in the municipal code, the principle for which we contend in the law of nations, and if it cannot be maintained in the one, it will hardly admit of support in the other.

It is not only folly, but wickedness, to say, that a state may lawfully do, what in an analogous case would, in an individual, be unlawful. Let us narrow, therefore, as much as possible, the odious plea of necessity. Few, very few are the cases in which it can exist. Many of them will, I believe, be found to hinge on this position: where conflicting rights are opposed, that of him who has the greatest equity shall be preferred. Thus, you have a right to purchase my neighbour's loaf; I have a right to take it away; if you exercise your right, I perish; if I exercise mine, you can live as well as ever. Which has the greatest equity?

Against the right in favour of which I have treated, two pamphlets have appeared. The first I shall notice is, that entitled "An answer to War in Disguise," &c. It is no doubt the composition of able hands. But, without the negative information of the preface, and taking the author's criterion to be just, I should certainly say he "holds no office, and has no connexion with those who administer the government,"* because "it shows a want of that caution and reserve, "which usually mark the compositions of public "men."†

I beg pardon for this sally of boyish flippancy; for it surely is immaterial to the positions of a writer, what he is, or even whether he write in the "spirit of "a lawyer, stimulated by that of a merchant."‡

Passing over, therefore, these little considerations, I shall endeavour, as much as possible, to confine myself to those observations, which are relied on to support the doctrine the author of the answer defends, though, were I disposed to trifle, wherever the answerer to War in Disguise affords room, I might travel laughingly along, throughout the whole of his work.

His first remarks, worthy of notice, are, on the rule of law, stated by Sir William Scott, in his judgment on the Immanuel. The language, as well as the sense of the decree, are equally the objects of attack; and, to make it successful, an explanation of the first, with a confusion of the latter, is at some length attempted. The expressions of that great and learned Judge, when speaking of the right in question, are, "the general "rule is, that the neuter has a right to carry on, in "time of war, his *accustomed* trade, to the utmost ex-"tent of which that accustomed trade is capable."§

* Preface to Answer to War in Disguise. † Page 5. ‡ Page 6.
§ 2 Rob. Ad. Rep. 198. Eng. Ed.

In commenting on this passage, the answerer says, " he begins, *the general rule is*—WE pause to put a " question. The general rule of what? WE an- " answer, *of the King's Prize Court.*"*

I must confess that this solemn pause did, like the " LO" and " OH" of modern elegiasts, give woeful presage of the sequel. It has been my misfortune, never to have my attention awakened by this species of flapping, without suffering all the mortification of disappointment. With deference, however, to the question, on the gravity of which I was unwilling abruptly to intrude, I humbly conceive " WE" have answered wrong.

If the positions advanced in this tract be just, Sir William was warranted in declaring that principle to be a rule of the law of nations. That he meant so to be understood, seems evident from the words he has selected.

He says " that the neutral has a right." Can it be supposed that Sir William Scott would ever assert, that neutral *rights* depended on rules of the King's Prize Court? Some of their privileges and immunities, their exemptions from a rule of the law of nations operating in behalf of any particular belligerent, may, and do rest on the rules of the British Prize Court; because every one may renounce the *jus pro se introductum.*

If, therefore, a belligerent, entitled by the law of nations to capture the whole of his adversary's trade, elect to seize but a part, he relinquishes, as he lawfully

* Answer to War in Disguise, p. 18.

may, the residue.* Then, and not till then, "the "text of the king's instructions becomes the true rule" of the British Admiralty. It is then, and to such a state of things, that the subsequent part of the decree carped at, is, with the wonderful precision of the person by whom it was pronounced, clearly addressed.

On such occasions, he says, "much argument has "been employed on grounds of commercial analogy. "This trade is allowed. That trade is not more in- "jurious. Why not that to be considered as equal- "ly permitted? The obvious answer is, that the "rule of this court is the text of the instructions."— When is it so? When the King, having a right to seize all the articles of exclusive domestic trade, is pleased to take only a part.

A vessel or cargo, therefore, which, whilst the rule of law is in full force, may be a good prize, and lawfully condemned, may, when by the King's instructions a part of that rule is renounced, be acquitted, without any violation of the maxim, "where the rea- "son is the same, the law is the same." For, in truth, the reason is not the same.

Neither Sir William Scott, nor any other man in his senses, would say, "The cases are indeed simi- "lar, and of course the reasoning is the same, but the "sentence must be different; because, those are deci- "ded by the law of nations, and these by the instruc- "tions."† It is rather to be supposed he would say, because it is the only correct mode of expression,

* Suppose the United States compelled, for injuries sustained, to have recourse to war, may they not, in redress of those injuries, look for reparation only to one fund? and, whilst they so look for compensation, has a neuter a right to found an argument on their not appropriating the whole?

† Answer, p. 19.

" that the facts of the cases are indeed alike, but the " cases themselves are not similar; for one arises un- " der the entire rule of the law of nations, the other " under a modification of that rule; the reasons there- " fore *not* the same, and the sentences must be dif- " ferent."

It is a settled axiom of construction, that if a clause will admit of two interpretations, the exposition which is consistent, shall prevail over that which is inconsistent. In other words, that sense shall be preferred to nonsense; *ut res magis valeat, quam pereat;* and from hence I am led to believe my explanation of Sir William Scott's decision, rather the most correct.

Having thus cleared Sir William from the charge of absurdity, I shall, I trust, be enabled to exculpate him, from the imputation of " slily confounding"* *places* with *commodities*. His principles attach equally on both. The confusion, if any, is in the mind of its criticiser, who, with wondrous penetration, takes a distinction where there is no actual diversity,† in order to found an argument which does not apply.

He supposes that Sir William Scott, having an eye to the occasional suspension of the British navigation laws, and seeing that his explanation of neutral rights would, if taken in its largest signification, authorise the interdicting the commerce intended to be permitted by such suspension, found it necessary to qualify his definition, and confuse terms. That, for the first of these purposes, to the words " accustomed trade," he annexes, " to the utmost extent of which that ac-

* Answer, p. 19.

† For any man, with half an eye,
What stands before him, may espy,
But optics sharp it needs, I ween,
To see, what is not to be seen.

customed trade is capable ; and, for the second, substitutes the "*port*" for the "*trade.*"*

Why he should be reduced to this dismal extremity, is, I confess, not very apparent ; and if he was so unhappily situated, how he could, by this bungling contrivance, be relieved, is to me inexplicable. By what obliquity of reasoning the answerer has imagined him in such a dilemma, I am at a loss to conceive, and as the ideas of our author himself on the subject, are much like Mr. Toby Shandy's smoke-jack, I beg to be forgiven, if I should not clearly see their concatention.

To me it seems, as if our author fancied, that because the colonial ports of France were, in time of peace, partially open to the Americans, it was indispensable that the first interdiction to neutral commerce by Sir William Scott, should be of the commodities, on account of their not being such, as it was customary, in time of peace, to trade in ; but that perceiving this principle would affect the introduction into Great Britain, during war, of many articles, the produce of hostile countries, which cannot be imported, in time of peace, in vessels of a third power, and are, in warfare permitted, only by taking off the prohibition of the navigation laws, he, therefore, was obliged to change his ground, and, in the latter part of his decision, shift the inhibition from the commodity, to the port. For, if sugar, the produce of a hostile colony, be confiscable in war, merely from being an article in which the neuter could not trade in time of peace ; then, as the neuter cannot in time of peace trade in Spanish wool to Great Britain, her enemies may, in time of war, seize Spanish wool going to England. To avoid this result, therefore, he transfers

* Answer, p. 20.

the interdiction to the *places* from whence the trade is carried on, and then the argument will stand thus: *as between Cadiz and London you may trade in time of peace, you may do the same in time of war; of course Spanish wool may be carried from the one to the other.*

But as so violent a transition could not be instantaneously affected, without a certain discovery, Sir William, like an expert juggler, raises mountains, and makes an earthquake, "to take off the attention from logical disquisition"* during his conjuration, and thus be enabled to substitute the port for the trade.†

Miserable nonsensical intricacy! Trade is inseparable from place. The artful substitution complained of, is the offspring of the answerer's own imagination; not a feature of it is to be seen in the decision of Sir William Scott. His positions extend to places, as well as commodities, and apply to both with equal force. They rest on the doctrine of previous rights. Therefore, the trade of a neuter with a French colony, in articles prohibited before the period of hostilities may be interdicted, yet the importation of Spanish wool by a neuter into Great Britain during war be legal, though in time of peace unlawful.

A contrary idea has perhaps arisen from mistaking the signification of *accustomed trade*. I say perhaps, because I do not pretend to trace all the aberrations of a purblind understanding. But, as in page 23 of the answer, "*new and unaccustomed*" are used as synonimous, I am led to believe our author has interpreted *accustomed*, to signify "*existing*" trade;

* Answer, p. 21.

† This is direct mental hocus pocus. Cup and ball to the understanding.

and, therefore, it became necessary to qualify the expression by adding " to the utmost extent of which " that accustomed trade is capable," lest it should seem to be intended, to restrict the neuter's commerce to the *statu quo ante*, and thus prevent an increase in even those trades, which did antecedently subsist.

It is not, however, in such a sense that the word " *accustomed*" is to be received. It means trades of the same natures or kinds, founded on the same rights, and to which the neuter had in time of peace the same title. Every article, in every place which he could, before the war purchase, he may, during its continuance, buy ; for, this is no more than his accustomed trade carried on by the exercise of his previous rights. Very different is that trade which the neuter can in fact obtain " in time of war by *no* " *other title*, than by the success of one belligerent " against the other;" because, this is a title acquired after the belligerent right of capture has attached.

I agree, with the answerer, that a prohibition " as " to the place where commodities may be laden, is of " no greater import" than a prohibition " as to the " commodities themselves ;" but I say it is to the full as great ; and therefore, if a neuter be, in time of peace interdicted from buying certain articles in certain places, he cannot, in time of war, by a purchase of such articles in those places, gain a clear, or indeed any title, against the enemy of that state where the purchase was made.

The very power of acquisition is not only incumbered, but absolutely taken away.

Thus, in time of peace, an American may purchase in Martinique, rum, taffia, and molasses, but sugar

and coffee he can buy of the French, only in France. His accustomed trade, then, in those articles is, as to rum, taffia and molasses, carried on from the United States to the colony; as to sugar and coffee, from the United States to France.

During war he may pursue the same trades in the same courses; for these are the customary manners in which his former rights were exercised. In these ways he may, notwithstanding hostilities between France and any third country, prosecute such trades to any extent of which they are capable. For, in thus conducting them, he does not interfere with any vested right of the enemy of France, whose claims are all in subordination to those, to which the Americans were previously entitled. Let war be to them a continuation of their former state, and they, in their sugar and coffee trade, prosecuted as before, will meet with no interruption.

But during war they cannot accept a license to purchase those articles in Martinique, because the British right of capture, cast on them by operation of law, gives a vested right in all property of that description, from the first moment of its existence till its arrival in France, where it is liable to be divested by the exercise of the prior right of the Americans to buy, in the same manner as the vested right of capture in rum, taffia and molasses, may be divested by the exercise, in the colony, of the previous right to purchase those commodities whilst there.

Let us now, keeping always in view the doctrine of previous rights, see whether the importation into England, of Spanish wool by a neuter, may not, during war, be lawful, though in time of peace illegal.

Antecedent to the present hostilities, the Americans had, in common with other nations, a right to buy Spanish wool in Cadiz. By the exercise of this previous right on any portion of the subject matter, they appropriate to themselves, as first in time, that which was open to all, and acquire a right against all other neuters, as well as divest the subsequent belligerent right of capture. By thus uniting the right of property with the right of possession, a complete title against all the world is fairly gained.

In virtue of this perfect title, they may, where it can be done without infringing on the rights of others, carry this wool wherever they please, and sell to whom they like. But previous to the acquisition of this title, there existed, in all governments, a local right, arising from territory, to disable, within the limits of their dominions, under pain of confiscation, all persons from importing any articles it might be deemed expedient to inhibit.

The exercise of this local right takes away, within the limits where exercised, the subsequent right obtained by the purchase, but gives no right to strangers.*

In time of peace, therefore, whilst the English navigation laws are in force, the violation of them cannot be punished by France.

During war, the British may, under their previous right, take off the local disability they had imposed. As this disability did not confer any title on any third party, its amotion by the exercise of the British previous right, prejudices not any rights of others, and of course can create no claims. For, as the passing

* Hence it is that nations, being extra-forensic one to the other, cannot enforce the revenue laws of other states.

an act, inhibiting the importation of Spanish wool into England, is merely an exercise of local right, operating within the precincts of a circumscribed jurisdiction, its repeal cannot confer any rights, beyond the limits of such jurisdiction.

There is no analogy between prohibitions on domestic colonial trade, and prohibitions on foreign commerce. In the first the inhibition is general, going to the very purchase and preventing the acquisition of a right in the subject matter; in the last it is partial, going only to the introduction or selling, without affecting the right to acquire.

When a belligerent gives, during war, permission to a neuter to buy, in a colony, an article, which, in peace, he could not there purchase, the license is in derogation, nay fraud, of the previous intervening right of capture, cast by the law of nations on his adversary; but when the belligerent gives permission to import into his dominions, commodities, which, in peace, the neuter could lawfully purchase, no more is done than to renounce the *jus pro se introductum*, without infringing on any the most trifling right of his opponent. On the colonial trade, therefore, in which the permission is to buy, the belligerent may exercise his previous right to capture, but on that, where the permission is to import and sell, he has no previous right to enforce. Against neutral commerce, all belligerent claims, except in the cases of contraband and blockade, apply to the acquisition, as being made in contravention of the right of capture.

Where there is no previous right, there can be no pretence to seize. Therefore, in peace, the British cannot make prize of an American, carrying on a

contraband trade with Martinique, though they may in time of war capture the same American, carrying on with that colony a permitted trade. For, their right does not arise from the unlawfulness of the trade, as it respects municipal regulations, but as it regards their previous belligerent right of capture, vested in them by the law of nations.

In time of peace no such right can exist. When in force, it is not founded on the criminality of the trade between those engaged in it, but on its illegality against belligerents. It may, therefore, as to them be criminal, when between those who carry it on, perfectly innocent ; and, *vice versa*, innocent to them, when criminal between the parties. Thus, I have, I trust, explained how that pretty saw, of a trade "being innocent only while it is criminal, and criminal "the moment it becomes innocent"* may be literally true. I cannot, however, quit this part of the answerer's work, without congratulating him on being the first, who has ever discussed a legal question in conundrums, and expressing my sincere hope of shortly seeing a publication of neutral riddles, by the author of the answer to War in Disguise.

The parody of Sir William Scott's accurate definition, is made in the same unfortunate spirit of misconception, which dictated the comparison between a prohibition against purchasing domestic produce, and one against importing foreign commodities. The trade in wool from Cadiz is not "shut up against others to the exclusive use of England."† The purchase is open to all ; the *importation* only, into Great Britain is interdicted, in virtue of a previous right, inherent in all nations, of enacting municipal regula-

* Answer, page 24. † Answer, page 21.

tions for the exercise of trade within their own territories.

I, like the answerer, deny that such institutions "can in any way limit the public rights of neutrals in "time of war."* I, also, with him, "deny that stran- "gers acquire rights against each other by" such "do- "mestic regulations."* There let him take his stand; it is one of my own grounds; spacious enough for both; never will I attempt to remove him from it; my only surprise is, how he got there.

The determination of, whether a decidedly great naval superiority gives a certainty of colonial conquest, though it might be easily proved, is unnecessary to the present discussion. My inquiry is directed only to the right which a belligerent has to interdict neuters from carrying on, during war, a trade with a hostile colony in articles which they could not *there* purchase in time of peace. In its prosecution I lament being compelled to vindicate the decision of Sir William Scott, from the gross misrepresentations and idle criticisms of the answerer to War in Disguise; a gentleman who, with not a sufficiency of classic lore to correct the illiterate phrase of "predi- "dicating on," calls aloud for accurate language, which he is ever misconceiving, and inveighs against loose terms which he is forever using.

After confounding domestic with foreign commerce; cases arising under an entire rule, with those under a modification of it; and jingling contradictory words in harmonious antithesis, our *Zoilus* attacks that part of Sir William Scott's decree, in which he supposes the neuter to say, "true it is, you have, by "force of arms, forced such places out of the exclu- "sive possession of the enemy, but I will share the

* Answer, page 22.

" benefit of the conquest, and by sharing its benefits " prevent its progress. You have, in effect, and by " lawful means, turned the enemy out of the posses- " sion which he had exclusively maintained against " the whole world, and with whom we had never pre- " sumed to interfere; but we will interpose to pre- " vent his absolute surrender, by the means of that " very opening, which the prevalence of your arms " alone has effected."*

Language so plain could not, one would imagine, be misunderstood. Yet our answerer has either misapprehended, or wilfully perverted its meaning. If the former be the case, he is to be pitied; if the latter, to be despised. Does he not know that colonies are exclusively held in two respects? First, as to place; next, as to trade. That the words " exclusive possession," apply to commerce, and not to territory? That in speaking of the means of reducing colonies, Sir William mentions as one, directing the exertions of a belligerent against their trade, which he had before described as " shut up to the exclusive use of the " mother country to which the colony belongs?"— That, therefore, when, by a naval superiority, a power is obtained of capturing the trade, which was before " shut up to the exclusive use of the mother country," the belligerent has " by force of arms, forced," in one respect, " such place out of the exclusive pos- " session of the enemy?" Because, the enemy has then, the exclusive possession only of territory, and not of territory and commerce. That it is this possession of trade, with which the neuter " presumes to " interfere, and thus prevent the *absolute* surrender" of the place, " by the means of that very opening, which

* 2 Rob. Ad. Rep. 200, Eng. Ed.

" the prevalence" of the belligerent's " arms alone " has effected ?"

That this *absolute* surrender, signifies the surrender of trade and territory, every one who reads the decision must perceive. Did any neuter ever attempt to take a joint possession of territory gained by conquest ? Yet our author, seeing, or pretending to see but half of the reasoning, fixes his dim eyes on territory alone, and then, beholding nothing but joint-ownership in the colony, exclaims, " if by forcing a place " out of exclusive possession, conquest be meant, let it " be so expressed." " If conquest be not meant, the " terms as applied, mean nothing. If France does " not exclusively possess Martinique, let us know who " is the joint-tenant. If it be Britain, let her perform " some act of ownership, issue some order, promul- " gate some law, for the government or administra- " tion, which will not be treated with contempt there, " and with ridicule every where."* As if it were necessary for Great Britain to commit an act of folly, in order to disprove nonsense.

Having justified the words of Sir William Scott, as being the expressions of " an accurate civilian," not depending for their allowance on a " special regard to " his situation," I shall leave the answerer in full possession of the sage and solemn remark, with which his observations on exclusive possession are ushered in, " that attack and conquest are definite words, of dis- " tinct meaning, and which must not be confounded."

Another absurdity, however, and, if possible of a more glaring nature, is laid to the charge of poor Sir William. He is accused of speaking of the possession of a thing, after it is destroyed.

* Answer, p. 26.

The part of his decision, where this manifest contradiction appears, is that, which almost immediately succeeds the passage last defended. He there says, with a reference to the effect of a naval superiority, on the trade of the colony, before exclusively enjoyed by the adversary belligerent, "You have lawfully destroyed his mono-"poly, but you shall not be permitted to possess it "yourself." To this our answerer, confusing the use, or appropriation of a thing, with the thing itself, replies, "we make neither of these assertions, much "less both of them together, not indeed, readily un-"derstanding, what is meant by the possession of a "thing destroyed."* Does he not know that a monopoly is only a mode of using a trade? and that though a mode be destroyed, the subject matter may remain? Therefore, though the monopoly of a colonial trade, that is, the exclusive possession of it by the mother country, be destroyed, the trade itself may subsist in other hands.

Where, for Heaven's sake, has our answerer picked up his knowledge of the English tongue? In what school have his dialectics been acquired? Does he mean to exercise his wits, like those foolish disputants, the sophists of old, by playing on the inaccuracies, and inadequacies of language? Does he imagine that his countrymen are thus to be tricked out of their understandings, and led to believe every inference he may, from such childish reasonings be enabled to make, or by the noble science of chopping logic, syllogistically demonstrate? If so gross a perversion of terms can pass for rational argument, we shall soon be prepared to receive as truths, those sophisms, which, by dint of words, can prove two fowls

* Answer, p. 27.

to be three, and a leg of mutton better than the Deity.*

As to the address, which the answerer supposes us to make to Great Britain, though I cordially unite with him in all the expressions of good will, which he uses towards that county, I trust the day will never arrive, when we shall be heard to acknowledge, that neutral rights are in the least dependent on the necessities of war; or, that we have no better title to a trade, than the advantage with which it is pursued. This, indeed, may be a reason for its continuance, but, with respect to our rights, they, I flatter myself, are laid, on a more honourable foundation than that of our interest; though, our interest, I hope, will never be sought, but on the foundation of our rights. It is only by the confusion of those rights, by confounding the right of purchase with the right of sale, that we have been induced to defend a dishonest trade, by applying the rules of one, to the regulations of the other. It is the mist of this confusion, which, to the eyes of the answerer to War in Disguise, has involved foreign and domestic trade, in one common obscurity; has prevented him from seeing the marked diversities, which distinguish the first from the last, and made him put in the mouth of the emperor of the French, as applicable to Great Britain, language he could direct only against her colonies.

* This was done by using the word "*nil*," or nothing, in opposite senses; first as expressive of entity; next, of nonentity. Thus, nothing is better than God; but a leg of mutton is better than nothing, *ergo*, a leg of mutton is better than God. For if a leg of mutton is better than nothing, and nothing is better than God, a leg of mutton, being better than nothing, must be better than God.

Let the gentleman who has written the answer call to mind, that with respect to rights, the rule of *prior in tempore, potior in jure* is, both in moral and political law, strictly true. He is, no doubt, a man endowed by the bounty of Heaven, with very considerable talents; on some points he is perfectly well informed, but let him not on that account fancy himself equally so on all. Let not his vanity, because of a superiority in one or two instances, apply to himself the *omnibus ornatum excellere rebus.* Let him avoid this, and his literary productions will cease to be, what the Answer to War in Disguise is, a tissue of wisdom and folly.

He will then, no longer deny, that "when an ene-"my, under an entire disability to supply his colo-"nies, and export their produce, affects to open" his colonial ports "to neuters, it is not his will, but his "necessity that changes the system; that change is "the direct and unavoidable consequence of the "compulsion of war; it is a measure, not of French "councils, but of British force."*

He will not then draw that foolish inference from these premises, that if this be so, every "extension "of" a neutral's "trade with a belligerent must be "equally inhibited, for it cannot be doubted that such "extension is a consequence of the war;" because he will then learn the distinction between acts done in pursuance of lawful rights, and those perpetrated in violation of them.

He will then see that of the extension, during war, of a neutral trade, legally carried on, antecedent to hostilities, "a belligerent," to use his own misapplied words, "cannot rightfully complain," because it is the consequence of a lawful act—an act infringing

* 2 Rob. Ad. Rep. 200.

not on the claims of others, but justifiable on the ground of previous rights.

He will also discriminate between those acts, which, being the result of license or compact, may be lawful, so far as regards the parties to such license or compact, and yet unlawful in respect of others. He will then behold the colonial trade opened to neuters, after war, in its true shape, as a combination between two parties to defraud a third—as an illegal agreement, which, though good between the parties, because no man shall take advantage of his own wrong, may be punished by the belligerent whose right of capture it is intended to defeat. Thus he will find that the inhibition of this nefarious commerce, rests not on its being purely a consequence of war, but on its being a fraudulent permission which the consequences of war have induced; that therefore, had he "wasted his" precious "time in "refuting distinctions between consequences direct "and indirect, avoidable and unavoidable," his sage observations would not have applied to a decision, where neither the one nor the other is relied on as the foundation of the judgment.

The trite reflexions on moral truths, upon the promulgation of which our author seems to swell with so much importance, and his sententious vapidity, I wish in silence to pass over; but when he presumes to state the sources "whence a belligerent derives "his right to make prize of a neutral;" and, confining it only to cases of contraband and blockade, dogmatically says, "these excepted, there is no right of "capture," I am lost in astonishment, both at his arrogance and ignorance.

If his reading has not acquainted him with another expressly laid down, springing out of a resistance to the right of search, how can he be informed of those which flow from the more abstract doctrines of the law, and are to be found by an analysis of first principles alone? the great and fundamental rules, on which all law depends. Unless directed by them, it is in vain to seek for the basis of legal rights. Destitute of these unerring guides, it is no wonder that the answerer to War in Disguise should be unable to discover the foundation of belligerent claims. I shall therefore, having barely remarked the inaccuracy already pointed out, no longer dwell on the miserable summary of the sole reasons, as our author would have them, which justify, during war, the seizure of neutral vessels.

The vindication of Sir William Scott being here concluded, I was about to take my leave of his puny critic, but as I rest the legality of interdicting, in a period of hostilities, neuters from all colonial trade, unauthorised in peace, not only on my own arguments, but on those of others, it would be discourteous not to, in some degree, espouse the cause of the author, whose able production has called forth the exertions of the answerer's pen; and here again, I find it to be the same dirty, mutilating instrument it was before.

An accusation is made, that in cases where goods are bonded on importation, official clearances on their reshipment are given, in which no mention is made that the articles were re-exported; and also, that our officers of the customs have, in the event of capture and further inquiry respecting their importation into America, "solemnly certified that the duties had "been actually paid or secured to the United States,

" withholding the fact, that the bond had been either " discharged on the production of debentures, or " other official instruments, certifying the re-exporta- " tion of the goods."

Here there are two charges; one of affording official clearances not correctly true, and the other of suppressing a fact, when questioned as to the payment of duties, which would show that they had been remitted. These circumstances are stated to be " facilities from the port-officers and government " of the United States, such as obviated every in- " convenience," for which " the simulated intention " of the merchants had to provide." The form of the clearance, is the " facility of the government ;" the certificate, that of the officer. Yet does our answerer, in vindicating the officers of our customs apply to them, the imputation against the government, without noticing the allegation against themselves. Having thus proved their innocence of a crime for which they were not arraigned, he asks " is it just, is it decent, to insinuate against men, " high in public trust, a charge of abetting fraud, " because they will not encourage plunder ?"

The charge is not insinuated, it is directly made, of being guilty of that *suppressio veri*, which is as much a falsehood, as the *suggestio falsi;* of that *twisticalness* (to use a term of native growth) for which we are chronicled, and justly chronicled, in every quarter of the globe, and of which the answerer himself, in his manner of evading the imputation, is a glaring proof.

In the same spirit of misrepresentation is almost every syllable of the answer written. Speaking of the favour, accorded to neuters, of importing the

productions of hostile colonies into their own countries, and the benevolent extension of that indulgence, by the British admiralty, to cases where the fall of the market had impelled the neuter to seek, after an endeavour to sell in his own port, an ulterior, though prohibited destination to one of an enemy, the author of War in Disguise mentions, that all our vessels caught in the interdicted voyages, invariably urged the same justification, which constant repetition of the same excuse for an *illegal* act, the prize-courts deemed a proof of guilt.

Would one imagine that the illustrations to establish so rational a conclusion, could be termed "attempts to show that the frequent recurrence of circumstances naturally incident to *fair* transactions, gives ground to suspect fraud." Is not the inference drawn from the *unfairness* of the transaction? and is not that unfairness almost acknowledged by the answerer himself, when he says, in the very next page,* with a reference to colonial productions, "that the American market is influenced by that of Europe?" For, if our importation of these articles was for our own consumption, and not for the supply of Europe, how could the European markets influence, with respect to them, that of America?

Let us not believe that the artifices Great Britain complains of, are the result of a "weakness which has no other resource than concealment." They are the refuge of our guilt; of a conduct which we dare not avow, which shuns, because it can not endure the light of day; of a systematized infamy, by which the author of War in Disguise has, as the answerer himself acknowledges "shown, in a satis-

* Page 45.

" factory manner, that an American merchant can " (if so disposed) furnish any evidence prize-courts " may ask, to prove such intention as they may pre- " scribe." But, let us not, from this demonstration, draw his corollary, " that it is equally useless and of- " fensive to abandon the clear and simple principles " of public law, for the sake of these loose and un- " founded notions." Because, those which he, for want of understanding them has been pleased to term, " loose and unfounded notions" are, as is proved, " the clear and simple principles of public law." Let us rather, from the melancholy truth so fully established, make this deduction, that we ought ourselves to prohibit a commerce, which, familiarizing us with perjury, tends to corrupt the morals of our people; which has made them a by-word among nations, and is carried on in fraud of the belligerent rights of our best and greatest ally.

In support of these rights, Great Britain cannot be justly accused, from the inquiries directed by her courts of admiralty, of violating, in the smallest degree, the respect due to our sovereignty. She is warranted, on taking our vessels in prohibited situations, when laden with suspicious articles, in demanding of the American, who interposes a claim, irrefragable testimony, of honest intention and *bona fide* acquisition. GOD forbid the United States should ever become a purifying soil to cleanse the taint of property infected with the guilt of its possessor.— Never, I trust, will the day arrive, in which a transmission of goods through this country, shall be held to give a legal title, to thieves and swindlers. Such, however, are the principles for which the *answerer* contends.

"Has it," he says, "been duly considered that *the* "property" purchased in a hostile colony, "when "once brought within our dominions, is as completely "our own, as if it had been of our growth and manu- "facture? Has it been duly considered that, even if "acquired in contraband trade, the inquiry cannot "properly be made, after goods have reached our "ports?" Yes, all this has been considered, and still it is undoubted law, that a belligerent may take, on an ulterior voyage, the colonial produce of a hostile colony, bought by a neuter, under a permission granted during war, even though it have passed through the neutral country, and notwithstanding articles acquired in contraband trade, cannot, after such transmission and a transfer, be touched; because the right of capture, in the cases put, is given by two different codes. The first, by the law of nations, equally in force in all places; the second, by municipal regulations, of only a local operation.

The colonial produce, whilst on its passage from the colony to the neutral state, is within the jurisdiction of the first system, and may, for the reasons before laid down, be taken. When arrived within the neutral territory, it is, during its stay there, protected by a rule of the same law, which forbids belligerents from enforcing their rights in neutral dominions. When again sailing on the ocean,* it is returned within the general jurisdiction of the law of nations, and, as the protection of the rule was merely a local

* The sea is called the common right of all; true, but it is not on that account subject to no law, for it is within the jurisdiction of the general law, the law of nations, and every thing upon it, amenable to that law; this common, therefore, like one on shore, cannot be used by the commoner, in subversion of the rights of his fellow.

suspension of one part of the law, the produce, by being thus removed from that district, in which such part was suspended, becomes again liable to its provisions.

Very different is the case of an article obtained in a contraband trade; for the right of capturing such a commodity is, from local institutions, enacted in virtue of a limited territorial jurisdiction. When the article is without those limits, no inquiry can be instituted against it, because it ceases to be obnoxious to those institutions, and as kingdoms do not, on the principles already advanced, acknowledge the revenue laws of each other, a transfer, in a different state is, by the paramount code, the law of nations, valid. But, I very much doubt, whether even a transfer of colonial produce, such as I am treating of, in a neutral state, if not purchased in the mother country, ought to be considered as passing any title against the prior right; for surely, the mere carrying smuggled goods within the limits of another state, would not, if they continued the property of the same owner, prevent their lawful confiscation, should they return within the jurisdiction of the government whose institutions had been infringed.

But, however this may be, it is I think, clearly proved, how distinct the two cases, supposed by the answerer to be analogous, really are. His imagining them to be at all similar, has arisen from the same everlasting confusion of ideas, which has bewildered him, throughout his whole work, in which, an ignorance of the grounds whereon the different rights are bottomed, has made him for ever confound the one with the other. Had this unhappy blundering been kept from print, had it not been obtruded on the public, by an uncalled for answer, and a self-

sufficient arrogance of manner, it might, though known, have been suffered to pass in silent oblivion to the tomb. But, when he makes this misconception the foundation of national wrongs, and openly calls forth, by an appeal to the passions, the resentments of the misled people, it becomes a duty to expose the fallacy and falsity of the answer.

After a tale of wrongs unsustained, and putting a train of inflammatory interrogations, is he to be deemed the advocate of peace, who bursts out into the threatening break of " must our government." No; he is the fire-brand of war, who wishes to lead us into its horrors, as those wretches on the coasts do ships in distress, by holding out false lights to lure them to their ruin. But, if he mean to close this unfinished appeal by asking " must our government " bear"—I will tell him what they must bear.

They must bear what all who attempt to rise by fraud and artifice must endure. They must, when detected, bear the kicks and cuffs of those in this great community of nations whom they have cheated and injured. They must bear, what we have lately borne, the menaces of Bonaparte, and Carlos his vassal. They must bear, what we have received from every power but England, public threats, scorn and contempt. This is what we must and do bear; more we might be obliged to bear, but that Britain, generous and good, seeing us prostrate, does not, as others have done, bid us lick the dust before her.

Such an insult from *her*, would, I firmly believe, call forth, as it ought, that indignant, but latent spirit, which her sons have transmitted to us. We should, I doubt not, instantaneously resist the affront. How comes it, then, that we have bowed down our necks

before the thrones of France and Spain? Because from them is held out to us, what England will not offer, the bribe of colonial trade; this curse, which, like a charm, seems to have extinguished every sense of national honour, and stifled the feelings of humanity itself. It is this baneful cause that has induced us to be the wicked ministers of black vengeance; to furnish a negro rebel with implements of death and destruction, to be exercised with all the barbarities of savage ferocity, in murdering our fellow whites. It is this same corrupting, debasing cause, that made our government wink at equipment after equipment for the supply of those bloody regions, where the eye sickened at daily scenes of gore; which made us blind to their terrors, though our papers teemed with the horrid details, and our own shores swarmed, at the very time, with crouds of wretched fugitives, escaped from the massacreing knives and bayonets of Hayti; forlorn and destitute wandering through our land. Sympathy alone should have dictated the interdiction of so cruel a trade. But, deaf to her calls, we were stunned into the prohibition by the commanding voice of *Napoleon*, Emperor of the French, ordering us, in terms that have never yet been divulged to the public ear, to inhibit; and inhibit we did.

It is this prolific source of ill, which has begotten among us, a species of French affection, that renders us blind to the injuries received from France, though all alive to the minor aggressions of other states. The confiscation of our vessels, under the maritime code of Bonaparte, for having on board a single bale of British manufacture, has been submitted to, with scarcely a murmur. The plundering our trade, with-

in our very bars, landing our crews on desart isles, burning our ships met at sea, without the least pretence of having violated neutral conduct, putting officers and men into one indiscriminate state of confinement, or making them work before the mast, and giving for the value of the property destroyed, bills, no Gallo-American would indorse for 50 *per cent*, occasion only a newspaper remark, or, as the utmost of national resentment, a conciliatory diplomatic representation. But, no sooner does an Englishman only write a book on his country's claims, or neutral wrongs, than our French love rings the tocsin of alarm, and calls on the people to avenge the violation of rights they do not possess. It is the deleterious consequence of such a procedure, that has impelled me to write this little tract. I fear, lest this ill-judged passion, which seems to have infatuated our rulers, for we are not yet arrived to the perfection and blessings of self-government, should lead us into some fatal excess; lest it should, by the breath of such incendiary publications as the Answer to War in Disguise, be blown into a flame, which may ultimately consume ourselves.

As fuel to such conflagration the answerer supplies distorted facts, and misrepresented motives. He says that in the pamphlet he professes to answer, "it is proposed that Britain should capture neutrals "in the two-fold view of avoiding an inconvenience, "and gaining an advantage." It is false that these are the motives on which Great Britain is urged to make prize of neuters. War in Disguise, having established her right to capture, uses these consequences, as reasons for enforcing that right.

The reasons assigned are not the foundation of her claim; they are arguments why she should insist on her title. Yet are these arguments stated as the primary cause, not as the auxiliary inducement for exerting the right. It is this dishonesty of soul, this disingenuousness of mind, portrayed in the manner of the answerer's stating his antecedent positions, that marks every step of our behaviour.

The sum of what is said on that subject, is not, therefore, "my interest is reason, and my will is law; "my advocate is power, and I myself am judge;" but, "reason dictates my interest, and law justifies "my reason; I have power to enforce the law; when "and where it shall be done, my will is the only "judge."

With the same view of stimulating the British to their rights, it is truly said by the author of War in Disguise, "with the exception only of a very small "portion of the coasting trade of" their "enemies, "not a mercantile sail of any description now enters "or clears from their ports, in any part of the globe, "but under neutral colours." But never would an Englishman, much less an English lawyer, draw "the strong inference that no neutral vessel should "be allowed to enter or sail from the ports of their "enemies," because every Englishman would remember and respect the prior rights of neuters, in those ports they were previously entitled to enter and trade, "to the utmost extent of which that trade was "capable." Britain is not influenced merely by "the "advantage to herself, and the disadvantage to "France." She is regulated solely by her right to interdict the one, and promote the other.

How far the blockading decree of Bonaparte, and the servile acquiescence of the neutral powers, may, by Britain, be thought to confer a right to make general captures of vessels trading with France, is a serious and awful question. In this momentous crisis, it ought not, by the rejection of the British treaty, to have been left in doubt; for if ever there could be a period in which "advantage to herself, and disadvan-"tage to France" might be allowed to operate, it is now, when, on the side of Britain's advantage, stands that of the world.

After pursuing the same train of reasoning, our answerer relapses into his former facetiousness, and, having observed that the author of War in Disguise has told us, "the looms and forges of Germany are "put in action by the colonial produce of the enemy," in merry mood confesses, "we did not know that "the West-Indies supplied iron to German forges." Did we not indeed, Sir? Suppose, however, they had furnished iron, when did you know a forge to be put in action by that upon which it worked? When did you ever hear of the meat roasting the jack, or the wood burning the fire? Do you not perceive that you are again, in witty folly, confounding cause with effect?

Were these idiot vivacities the sole characteristic of the answer, the smile of silent contempt is the only notice I should have bestowed; but his wicked distortions of facts and arguments have, from their malignant tendency, excited in my breast, as I think they must in the breasts of all others, a strong and serious indignation. They are calculated to hurry us into a war with Great Britain; a measure teeming with destruction to our infant hopes, and founded on the

profanation of every public right. A conviction of this alarming truth has induced me to more minutely pursue the fallacies of the answerer, than the intrinsic merit of his work would justify.

The exports from the West-Indian colonies of Europe are, by War in Disguise, truly stated as transmissions by proprietors of their own produce, to pay their debts and procure their comforts, rather than remittances in the course of trade. The merchant, therefore, making, on an actual purchase, a shipment to the same market, would have to sell against the grower of the commodity, who must, of course, be able to furnish it cheaper than the importer, whose article would be charged with an intermediate profit; that made by the planter in the colony.

It is hence argued, as reasonable to suppose such importations made on account of the hostile proprietor, under a commission for the use of a neutral name; because the neuter would then be sure of a certain emolument, instead of having to contend against the superior advantage, with which the produce of the cultivator himself would come to market. For, not being the subject of real commercial speculation, it could, with profit, be afforded at any price above the actual cost of raising and commission. From these circumstances, it is urged, that the gains on the article would ultimately be regulated by the commission, below which they might possibly in some cases sink; that, therefore, the neuter would abandon a commerce prosecuted under a chance of making less than the commission, and the belligerent, not being an actual mercantile character, but merely a shipper of the produce of his own farm, would be forced into a commission for covering his property, beyond the certain

profit of a trade, in which he was rather a rival, than a participator. Nor would it be "an act of idiocy in "the belligerent to give more for covering his pro- "perty than the profit of the adventure," when made by a neuter, could produce. But it would be stupid indeed, in the neuter to continue such a commerce; and he, it is evident, would relinquish it, because "no logic can be needful to show that men will not "prosecute a trade that does not pay commissions."

From this it would seem to follow, as War in Disguise has imagined, that the circuitous trade of the French and Spanish colonies, with their mother countries, is really carried on upon belligerent accounts. I incline, however, to think, that in this respect he is mistaken; and that a great, if not the major part of those shipments, excepting such enormous cases as the contract with the Dutch East-India Company, are actually made on neutral account, the number of whose adventures, aided by cheapness of purchase in the colonies, have counteracted the effects of the planter's remittances.

The means of making these purchases have, no doubt, in general, arisen from the fraudulent gains of neutralizing deceit, and of "trading *dishonestly* on "our own account, with the colonies of the powers "at war." Much, however, is still covered property, and wherever the cargo appears to be in consequence of a previous sale in Europe, or for bills drawn for its value, it may almost invariably be set down as enemy's goods; so, nine hundred and ninety-nine times in a thousand, where it is alleged to be the proceeds of funds left in the enemy's hands.

But notwithstanding I differ from the British writer in the fact, he, from the above reasoning seems to in-

fer, I fully agree with him that it ought not " to be " supposed the important conclusions to which" he " reasons, depend on the fact that the trade in ques- " tion is carried on chiefly, or in some degree on ac- " count of" his country's " enemies. Were the con- " trary conceded, very little, if any deduction need, " on that score be made from the sum of the mis- " chiefs ascribed to the encroachments of the neutral " flag."

It is not here, however, that I stop. I go much further, and say, were our commerce, in the articles we cannot, in peace buy in the colonies, our own; were there not a particle ostensibly, but the whole actually, American property, Great Britain would be entitled to condemn every atom. This I say, not " because the ground of right is abandoned, and the " question confessedly put on the ground of conve- " nience," but because the ground of right is firmly adhered to, and ought to be strenuously maintained. Because it is the only ground the good and virtuous, whether of men or of nations, ought ever to take. Because it is the position from whence every step, whether in public or in private life, is marked with profit, dignity and honour. Because, never yet did men or nations depart from it, without meeting ultimately, with loss, humiliation, and disgrace. Because it is on the ground of right, the firm and solid basis of prior right, that the rule first practically established by the British, in 1756, can, against all the carps and cavils of barking and fraudulent neuters, of disappointed and interested belligerents, nay, of the whole world itself, be openly, honestly, consistently, and, I trust, successfully defended. It is that prior right, cast, in

the first instant of war, on the British by the operation of law, which gives them a vested interest in all the property of their opponents, and prevents any neuters from accepting, during hostilities, a permission to purchase such property in fraud of their antecedent right; which makes that property, when so purchased, liable to their previous right, though in the neuter's hands, and in satisfaction of that right, justifies its capture and condemnation.

To induce the British government to enforce so important a right, accorded by the law of nations, as the only sure means of protecting belligerent claims, against the fraudulent ingenuity of commerce, War in Disguise is highly commendable in tracing, through every ramification, the noxious growth of neutral colonial trade; in exposing the baneful results of that ill-advised kindness which prompts to neutral indulgences; its never ceasing abuses; its deleterious effects on English merchandise; its benefit to her enemies, and its injurious consequences to her naval heroes, the admiration, terror and envy of the world; the brave and godlike supporters of her azure throne.

It is not imputed to us as one of "our crimes, that "we diminish the profits of sugar refiners,"* but it is represented to the august majesty of the British nation, that its gratuitous relaxation of belligerent rights materially prejudices an industrious part of the community. It is false therefore, malignantly and wickedly false to say, that War in Disguise has ever required "our rights to be invaded, or our property "plundered, that refined sugar may become dear in "England."† Such an argument was never yet ad-

* Answer, page 5. † Answer, page 55.

dressed to an English ear, and from it, not only the good sense, but the goodness of heart of that upright people, would turn with disgust. No man can in England step forth, like our answerer, the avowed champion of unprincipled conduct, without becoming an object of universal detestation and contempt. The most interested in the slave trade, never dared attempt its justification; their utmost endeavour went no further than to palliate its enormities, or show its mercantile importance.

It grieves me to observe the continued strain of ideot flippancy, and unvaried spirit of pert folly which runs through every page of the answer I am obliged to notice. It is mournful to behold such an unhappy repetition of aukward attempts at unsuccessful wit. It seems to be the effect of something more than human dullness. One would almost imagine that the bitter wish of a secret foe, "oh that mine "enemy would write a book," had been favourably heard by some evil genius, and the work in question written under his malign influence. I see hardly any other way of accounting for the criticisms, on the benefits stated to accrue to the enemies of Great Britain by neutral participation, in colonial commerce.

It is stated by War in Disguise, that "the hostile "treasuries are fed, by the same means, with a co-"pious stream of revenue, without any apparent "pressure on the subject; a revenue, which either "would be cut off by the war, or even turned into "our own coffers." In other words, but more at length, though not one tenth part so appropriate, that the hostile treasuries, through the means of neutral importations from the colonies into the mother coun-

tries, receive the same revenue arising from the duties which they did before the war, without experiencing any, even an apparent inconvenience ; but that this revenue, were it not for the neutral importations of colonial produce, would be cut off, by the British naval superiority preventing the transmission of such produce, or, that the produce itself, if attempted to be remitted, would be captured by the British, and, by being sent into their ports, afford a revenue to them. It is impossible that this, so plain and obvious a meaning of the paragraph, I have quoted, could be mistaken, unless under some extraordinary species of mental derangement. To the distempered imagination of the hero of Cervantes, windmills became giants ; so our answerer, converting a "treasury" into "a weight of taxes," and the benefits resulting from feeding it by neutral commerce with a "copious stream of revenue, into the "effect of such commerce lessening that weight by "taking off its pressure," and wondering, as well he might, how this could happen, if the relief was only "apparent," breaks out into the following piece of stupid irony. "Whether the weight of taxes "be lessened by taking off only the apparent pres-"sure, we leave to be determined by those who per-"fer appearances to realities." To discover, by what inversion of ideas, such a sarcasm could be fancied applicable to the reasoning of War in Disguise, has cost me no small degree of labour. It is far less difficult to account for our answerer's first exclamatory observation of, "how a revenue could be turned into "the coffers of Britain, by leaving the articles neu-"trals now export, to perish in the colonies of her "enemies, we are not so happy as to comprehend or

" conjecture ;" for being so *unhappy* as to read, " and " thus," for " or even," he has been unable to conjecture what he might otherwise have " compre- " hended."

After this display of ingenious irony, and giving us his own conceptions on the subject, our author proves to a demonstration, by historical reference, that the greatness of kingdoms, destitute of colonial possessions, did not arise from colonies; and that the revolutionary system of finance, of paying with what is taken, and taking what is paid, yields a more " effectual revenue than can, in the usual course of " things, be drawn from rich and luxurious countries." That from this procedure, together with the dereliction of luxuries, will be induced the " substantial " effect," not of " guineas in bank, but men in arms, " which form the power, and therefore the real " wealth of a nation." Poor America, what a beggar thou art. How small is thy display of wealth ! Where are thy standing armies to show thy riches, and yet it is thy " envied prosperity, blooming* on " the general felicity of mankind," that has excited in Britain a spirit of rapine against thee.

In opposition to the assertion, that " great " part of the Spanish treasure, shipped from South " America, may be reasonably regarded as net revenue, passing on the king's account," the case put, of bills of exchange " drawn by the Spanish treasury " on their agents in Mexico, and *sold* to neuters," is not " a strong case," for it does not apply.

In all parts of the world, bills of exchange are objects of fair purchase, and the proceeds of them,

* Our answerer sometimes writes a kind of Della Crusca prose.

when in neutral hands cannot therefore be touched. But if the neuter take a bill of exchange without giving any value, the money received on it is not his, but the drawer's, and it is in this point of view, that "a great part of the Spanish treasure shipped from "South America, may be reasonably regarded as "net revenue passing on the king's account," and not when passing in the manner supposed by the answerer. I again have to remind my readers, that the *consequences* of the neutral trade with colonies hostile to Great Britain, are never charged as crimes against neuters, but as reasons to Great Britain why that trade should be prohibited.

Having travelled through so many dull and heavy sheets of the answer, it would be ungrateful not to acknowledge and be thankful to the author for the relief I experienced on arriving at his 63d page. In this there does glimmer a faint spark of lively imagination, and, notwithstanding it would be an easy matter to extinguish the tiny ray, far be it from me, in the least to obscure its feeble lustre. Gleam on my puny fire, and illumine, though it be with disastrous twilight, the dark labours of thy master's pen.

That, in interdicting neuters from an unusual trade with the colonies of her enemies, Great Britain should be influenced, by a consideration of the consequences of its permission, in depriving her gallant seamen of the fair emoluments of war, is surely by no means improper. After having, by a succession of the most brilliant victories that were ever gained, sunk, taken, and destroyed, or otherwise chased, from the face of the ocean, the dismayed fleets of her foes, how must the conquering navy of Great Britain feel, how must they burn with indignation at behold-

ing the sea groan with the produce of hostile regions, gained in a commerce tolerated in violation of their ancient rights? a commerce, in which the very toleration is made the means of fraudulent transmission; which conveys, before their eyes, to their vanquished enemies, the well earned spoil of many a hard fought day; which nerves again, the palsied arm of France, and causes the veteran tars of Albion to bleed and die in vain. Can there be more cogent reasons for withdrawing the ill-advised indulgence they have granted? and, if withdrawn, can there be a more honest source of wealth than active exertions against an insidious commerce, which, like an assassin, stabs unseen? Ought it not to be rendered tributary to the victor's ease, nay, made to adorn his triumph? Let not then against this, so just and well founded a right, conferred, antecedent to our neutral claims, by the law of nations, any declaratory appeal be made either to the kingdoms of Europe, or our own self interested passions. Let us not by a spiteful policy endeavour to force Great Britain to wink at its infringement. Let us, if we wish to do it away, gain by treaty, in pursuance of a right, prior even to that of capture, a lawful title to its prosecution, and when thus acquired, let us, against all earthly power, maintain it inviolate.

That some of these our prior rights have been grossly insulted, is doubtless true. The melancholy result on one occasion is fresh in the recollection of us all: Not from the grievious loss the nation sustained by the death of the unfortunate Pierce, but from the solemn procession, the mock sorrow, which disgraced the two parties that then divided the state of New-York, each of whom dared to use the death of a citi-

zen for electioneering purposes ; and, while they held him up as a martyr in the cause of the people, viewed his body as a propitiating sacrifice in their own favour. Not one of the heads of these two factions, for we now have the blessings of three, did not follow, a joyful mourner, and not one who would not have so followed, in this pageantry of woe, the funerals of twenty victims of British violence, as they would be termed, for the casting vote at one poll.

Neither on the conduct of our general government, nor the resolutions of the city of New-York, after this event, do I wish to make any comment. The subsequent procedure of England manifests how averse she is to such daring infractions. Captain Whitby has been recalled, and he is now prosecuted at the suit of the Crown, under a particular statute, framed by the parliament of Great Britain, to meet offences of this nature. In what manner the affair may terminate it is impossible to say. The witnesses to testify against Captain Whitby have been sent for at the expense of the British nation. They are Americans, on the evidence of whom the Crown has directed one of its subjects to be tried. For my own part I am willing to believe the British officer not guilty of intentional murder, nay, even to acquit him of the legal consequences of his act. I am willing also to believe, for I doubt it not, that his government will, as far as justice can require, make full amends. But of not one particle of the guilt of violating our neutral territory, would I that we should acquit the British nation.

Making our stand on the firm basis of antecedent right, let us insist on the respect due to our limits.— Let us demand that the captain of the Leander,

though exculpated by the tribunal before which he is now arraigned, be never sent to cruise on our shores; that no English man of war bring to, any vessel within three miles of our coast, the distance to be ascertained by allowing a fathom of water for a mile of distance, and sounding for the depth. This, I know, will in some cases not be exact, but from the general shoaling of our coast, it will be found a tolerably accurate computation.

Let it be the right of our captains when boarded or brought to, to demand that the lead be hove, and let a refusal to comply be punished by penalties to be awarded by the admiralty court where the vessel is libelled, and if not there imposed, to be demandable by our minister from the treasury of the court of St. James. Let all this be done, and if justice be refused, then again I am for War without Disguise.

Let it not, however, be against Britain alone that we assume this dignified position. Let us take it against the world. Let us not be seen erect against one, and humbling, bowing, cringing to another. Let us not attempt to touch one hair of the British lion, whilst we with one hand scatter grain before the Gallic cock, and smooth his ruffled feathers with the other. It is this dirty, paltry conduct, that makes me blush with shame, and sink with confusion, at the fallen state of the American name.

Let us take the high ground of public right, and God will uphold us in the righteous position. For most firmly am I convinced, that never are those left forlorn, who rigidly adhere to the strict paths of moral duty. It is from this conviction, that all I have heretofore said, has most conscientiously proceeded. Because I am firmly persuaded, we have no right to the

commerce of which I have treated, and that, therefore, we ought ourselves to interdict it. So may heaven prosper me and mine, if every syllable of what I have on this score uttered, be not the dictates of sincere belief; and if, before I sat myself down to write, I had not, as far as in me lay, dispassionately viewed the subject.

I am not the advocate of British claims, in subversion of neutral rights. I am the defender of every legal right, whether we or others have infringed it; because I think, on the observance of those rights, our ultimate national prosperity depends. Never, I trust, shall I be biassed to say that is true, which I know to be wrong. Never, I trust, will the American people desire others to adopt a system, they themselves would be loth to enforce. Never may they desire to enforce that to which they have not a right; and if they do, the spirit of patriotism itself might, consistently and devoutly beseech the god of justice and her country, to forever thwart them, in such their nefarious wishes.

It has been with regret, that I have felt myself obliged to devote so much paper to the idle effusions of the Answer to War in Disguise. It has necessarily postponed my observations, on the other points I propose to examine, far beyond what the merit of the pamphlet that has interrupted me really deserves. I am, however, constrained still longer to delay, what I have to advance on those points, from the notice that I am compelled to take of Mr. Madison's examination of, what he terms, the English doctrine, which subjects to capture a neutral trade, not open in time of peace.

Much of what has already been urged, will apply to his positions, and the criticisms, on the decisions of Sir William Scott, that he has been pleased to make. I must beg him, however, and all others, in those parts of the antecedent reasonings, which combat his arguments, as well as the answerer's, to do me the favour, as far as relates to Mr. Madison, to abstract the matter of what I have said, from the manner in which it is delivered. It was impossible to treat such a *thing* as the answerer with the most trifling appearance of respect. Mr. Madison, though perhaps a little too liberal in his imputation of predatory motives to the cabinet and courts of England, does not write with that disgusting tone of arrogance and self-sufficiency, every line of the answer assumes. He is, therefore, entitled to the benefit of the laws decency and civility have established, between writers who espouse contrary opinions. It is according to such that I mean to treat him, and my endeavours will not, I trust, fall short of my design.

Mr. Madison begins his examination with stating a principle, that no one has ever denied, and that the British cabinet is by no means inclined to dispute. It is, that in peace, the commercial intercourse between any two countries, is regulated by their mutual compacts, and cannot be controuled by any other nation. The reason is obvious; because, then the rights of any other nation do not interfere, and their compacts are, then, the law.

But though this be so in times of peace, it does not follow that it should continue to be so in times of warfare. For, if by war any intervening right to controul such commercial intercourse be given, by a para-

mount law, obligatory on all, that right so bestowed, will justify, to the extent in which it is conferred, controuling the commercial intercourse between neuters and the belligerents.

That such a right is given by war, under the law of nations, has before been shown, as it respects the colonial trade. That it is so given as regards contraband and blockade, is by Mr. Madison admitted.—Therefore it cannot be true, that "it is evident the "commerce between nations not engaged in the war, "cannot be affected *at all*, by a war between other "nations."*

To determine the question, how far a war, between any two powers, can affect the trade between either of those powers and a neutral state, it is necessary to first ascertain, what rights of trade subsisted between the neutral and that power, at the breaking out of the war, and what rights are by the war, conferred on the other hostile nation. For, if any right be *then* conferred by operation of the law of nations on either belligerent, it cannot be taken away by any subsequent compact, between the other belligerent and a neutral government.

That such rights are conferred, has, as I have above said, been demonstrated, and admitted; I shall therefore, on that point make no more than this single remark: every right conferred by operation of law is, *co instanti*, a perfect vested interest, attaching on the subject matter. Against this interest, so conferred, and so attaching, is set up a right of emption, subsequently acquired, and subsequently to be exercised.

* See Mr. Madison's Examination, p. 1.

It is conceived to be impossible, on any principle of law or equity, to contend that it shall, after notice, defeat the prior right.

The authorities adduced at great length by Mr. Madison, and urged as conclusive on the subject, do not, it is with deference presumed, in the least bear on the question. They, without exception, relate to the neuter's right to *sell* his own commodities, not to his right freely to *purchase*, the goods of an enemy incumbered with the belligerent interest of the hostile opponent. They tend to establish, what has never been denied, the neutral right, except in the notorious cases of contraband and blockade, to *dispose* of, not to *acquire* property. It is in this sense that Grotius, truly says "*in hos nullum est jus bellicum.*"

This view of the citations, may, however, on reading the first quotation from Grotius, b. 3, c. 17, § 1, be thought to be incorrect, but on looking at the reference from Grotius to b. 2, c. 2, § 10, and the examples in b. 3, c. 17, adverted to, in support of the position in § 1, it will be perceived that his observations are directed to cases where the present question is not in contest; where the articles are admitted to be *originally* and *bona fide* neutral property, not captured as good and lawful prize, but taken by belligerents to support their armies, &c. in traversing neutral territories.

That they do not relate to goods bought from one of the parties in warfare, and taken by his opponent, is manifest from attending to the subsequent passages from Grotius himself, and to the whole tenor of the authorities brought forward to sanction the pretended right of purchase.

In chapter 1, b. 3, § 5,* every instance put, is that of a neuter's right to "*send*" goods; to "*supply.*" So in the note of Mr. Barbeyrac; who, indeed, seems to doubt whether, in order to a perfect right even to sell to a place besieged, it is not necessary that "the "seller had been accustomed to traffic in the same "goods," before the war. For if the goods sent be to deliver from extremity, they are allowed to be liable to confiscation. What conclusions, then, can be drawn in support of a right to buy, from authorities that warrant only the right to sell?

The first principle by which Mr. Madison proposes,† preliminarily to test the right of interdicting purchases, in hostile colonies, is, in the way he uses it, as little applicable to the question, as the positions of the authors to whose writings he refers. He says, the "general rule being that the trade between a neutral "and belligerent nation, is as free as if the latter were "at peace with all nations; and the cases in which it "is not as free, being exceptions to the general rule, "the exceptions, according to a received maxim of "interpretation, are to be taken strictly against those "claiming the benefit of the exceptions; and favour-"ably for those claiming the benefit of the general "rule." The fallacy consists in considering the freedom of the trade existing at the commencement of hostilities, to be a freedom to carry on a trade in war, that did not exist in time of peace; and that the exceptions arising, by the law of nations, are out of the latter instead of the former. In the first, the exception is that the neuter shall not carry on his

* See the authority, in page 12 of the Examination.—† Examination, page 8.

former, accustomed trade, to such particular places, and in such particular articles, though in time of peace he might trade to those particular places and in those particular articles. In the latter, as, by the law of nations, the neuter cannot in war, according to the positions I have before laid down, carry on any trade at all, in the purchase of the interdicted colonial articles, the exceptions made by the orders of council, or, as I like best to call them, the royal instructions, constitute the only trade the neuter can pursue, and therefore, must, on Mr. Madison's own reasoning, be strictly pursued.

This exactly accords with the doctrine of Sir William Scott, that what is not permitted is prohibited; and, according to Mr. Madison, is to be taken strictly against those claiming the benefit of the exception, and favourably for those claiming the benefit of the general rule. Therefore, the royal instructions being the exception to the general rule, the neuter must, to avoid condemnation, bring himself within the very letter.

The second introductory remark, is, as to the matter of exception, answered in the observations on the first. With respect to the necessity, which it admits as a lawful cause of action, I refer the reader to Mr. Randolph's first speech on Mr. Gregg's non-importation resolution. It is my wish to exclude, as much as possible, all reasoning from necessity. It is the tyrant's plea. It is ever open to debate, not only whether it exist or not, but whether or not it exist in a sufficient degree. It is therefore, for the security of mankind, desirable, to find out some principle, more susceptible of accurate definition, than this vague claim of necessity. Wherever such

a principle can be discovered, its certainty alone, is a powerful argument in its support. On this ground, then, the positions on which I have endeavoured to rest the belligerent right of capturing even in the hands of neuters, property fraudulently purchased from hostile colonies, are, as I conceive, entitled to a decided preference.

The third remark of Mr. Madison, is the very reason, why, to my mind, neutral commerce from belligerent ports, should, in times of war, be rigidly confined to the articles they could purchase in times of peace. For it is, by the extension of their trade in war, to articles they could not purchase in time of peace, that the means of hostility are multiplied, and that Europe is able to bear those "*gentle* "*bleedings*," on which neutrals fatten. Dry up the support derived from neutral supplies, and the fiend of war will sicken, wither and die. To hear a blood-sucking neutral whine and cant over the evils of war, is, to believe the leech wishes the feverish patient well.

Having disposed of the three prefatory remarks of Mr. Madison, I shall now advert to the principles on which, he thinks, the "*English*" doctrine, as I, in compliance with his appellation, shall term it, is assailable.

The first is, from "the writings most generally "received as the depositories and oracles of the law "of nations." On these, I have already touched, and, I presume, shown their total inapplicability to the present question.

The second is from "the evidence of treaties." Did treaties constitute the law of nations, then appeals to them would be evidence of that law. To con-

tend that the law of nations rests, on the various treaties, made, between different powers, would be preposterous. Their clashing, and contrariant provisions, render a reference to them, for a general principle, impossible. The utmost weight that can be allowed to them, is, to determine the rights of the parties. Stipulations, made by two independent nations, are good, as to themselves, but can never be obligatory on a third. If obligatory in one point, they must be equally so, in all. The absurdity of this last position, is too glaring to be insisted on; and yet, if treaties are, on third parties, any way binding, that absurdity must follow.

Even the acknowledgment of a right claimed under the law of nations, if made to *one* power, cannot be available of, by *another*. It may be the result of a friendly disposition; of valuable consideration; of free good will. But, what right does this confer on a third party? The law of nations is, to use Mr. Madison's words, "to be judged of,"* "by an "appeal to a moral standard of right." Treaties may, nevertheless, be repugnant to that general moral standard, and yet be obligatory, because any one may renounce the *jus pro se introductum*. An appeal, therefore, to particular agreements (for such treaties are) to test general rights, is inadmissible.

The third principle, by which the right, claimed by Great Britain, is to be tried, is still more extravagant. It is "by the judgments of nations, other "than Great Britain." On a parity of reasoning, should Great Britain seize and condemn, an American vessel and cargo, for having on board a single bale of goods, of French manufacture, she may jus-

* Page 46.

tify it under the *code des prises*. This is, contrary to all ideas of law, reason and justice, establishing the *res inter alios acta* to be conclusive on the *jus tertii*. The right of a belligerent, against neutral commerce, may be relinquished of its own free will, gratuitously; or, by compact, under treaty. Can, either one, or all of these reasons, found a rule to govern other nations?

The fourth principle is more plausible, but not more sound. It is to be derived from "the conduct "of Great Britain herself," and this in a two-fold point of view. First, as it regards the implication, in favour of certain trades, to be made from the royal instructions; secondly, as she herself adopts, the very measures, she censures in others.

The fallacy of the reasoning deduced from the supposed implications, arises from considering the implication as extending to general interdicted commerce, where the restriction, under the royal instructions, is applicable to only a particular trade. Thus, when the instructions are directed against a trade *from* a belligerent colony, it specifies the trade it means to interdict; and all other trades, *from* such belligerent colony, are therefore, by implication, permitted. But this does not imply a permission to carry on any other trade, interdicted by the law of nations. The royal instructions specifying that portion, of the individual trade, which it means to insist on, permits, by implication, the carrying on, only the residue of the remaining branches of that individual trade; not that every other branch of commerce interdicted, by the law of nations, in war, is thereby set loose. This explanation will, it is conceived, at once do away all the arguments advanced

by Mr. Madison, in favour of the implication warranting the prosecution of every prohibited trade, not mentioned in the instructions; and this, by simply confining the effect of the instructions, to that trade against which it is levelled.

The alterations made in these instructions at various times, are not to be attributed to the commercial jealousy of Great Britain, or any other improper motive, if they can be otherwise fairly accounted for.—That she has a right, to totally interdict the trade, which the neuter could not, in time of peace, carry on, in the ports and articles of the hostile colony, if the positions on which I build my doctrine, be correct, is manifest. When she relaxes, it is a measure of grace and favour, that she is by no means bound to continue; and, if she perceive it abused, or attended with prejudicial consequences, she is authorised to revoke and retract at her will. If the retractions be contrary to previous instructions, they, like laws, revoke and abrogate the former contrary tolerations.—If they only modify, they may be taken in conjunction. If they are to be interpreted, antecedent instructions may, when in *pari materia*, justly, and in conformity to every rule of construction, be referred to. Taking these principles into view, how easy is it, to reconcile every decision of the British admiralty with known rights, and according to known and settled rules. It is only by confounding general, with particular trade; the implications of the law, with the law itself; and decisions under the one, with adjudications under the other, that any perplexity, in the plain and sensible determinations of the British courts of admiralty and appeals, can possibly arise. Let the

neuter bear in mind, that there exists a rule of law, by which he has no right to any trade, that in peace, he could not pursue, either in enemies' ports or hostile produce; that the royal instructions are relaxations of that rule, only in the trade, respecting which they are issued; that a coasting trade is interdicted, not as the trade of a neuter, but as that of a naturalised vessel, and it will be impossible for him to mistake the line of conduct he ought to follow. The whole chain of Mr. Madison's arguments, tested by these principles, will dissolve, and, "like the baseless "fabric of a vision, leave not a wreck behind."

The *dicta* of judges, and the speeches of parliamentary declaimers, are, surely, no solid foundation for legal positions; I omit, therefore, noticing the arguments deduced from them. I cannot, however, refrain from remarking, that in the statement of the facts of cases, Mr. Madison will never acquire much celebrity for accuracy of quotation, if he never relate with more fidelity than he has detailed those, in the case of *Berens and Rucker*.

The dreadful inconsistency of Great Britain, in blaming others, for what she herself does, and the animated invectives of Mr. Madison, on the occasion, are the offspring of, to me, the most unaccountable mistake. It is impossible, that it should ever exist, unless belligerents be first changed into neuters, neuters into belligerents, and the rights of each reciprocally transferred. Great Britain does not blame the French, the Spaniards, or any other of her enemies, for opening their colonial ports, and offering their produce for sale to neuters. She blames the neuter who buys in fraud of her belligerent rights,

and then insists on being considered as a *bona fide* purchaser.

If a man have a judgment on his estate, it is no crime in him, if he do not conceal the charge, to offer that very estate for sale; but what should we think of the vendee, who, with notice, should claim to hold it discharged of the incumbrance, merely by paying the consideration money? How would any, and every court, both of equity and of law, treat such a claim? Yet this is, exactly, the claim set up by neuters, to enemies' property, incumbered with the belligerent right, cast on it, by operation of law, on the breaking out of war.

It is the omitting to take into view this right, that induces Mr. Madison to suppose, there is a flagrant absurdity in Great Britain's, at some times, permitting neuters to carry, to her domestic colonial ports, the produce of hostile colonies.

Great Britain has a right, to interdict, in war, all trade, from the colonies of her enemies, in articles not authorised in time of peace. Having the right to interdict the whole, she may modify the exercise of that, her own right, as she pleases; she may renounce a part, and retain the rest; or she may, under terms, give up a portion and insist on the residue. *Cujus est dare, ejus est disponere.* As the gift is without an equivalent, it confers no title on the neutral. The permission, therefore, to trade in hostile colonial produce, is an effusion of grace, without consideration, held at will, and resumable at the pleasure of the donor. Yet this is an inconsistency that shocks the humane neuters, who are so solicitous to soften, *through their own ports*, the horrors of war, but are in arms,

if the belligerents themselves agree to exempt from its rigours, any two given places or ports.

The charge, of commercial rapacity, may, with far more truth be made against the interloping neuter, who stands ready to catch at any proffered advantage, however ephemeral, at every hazard and under every indignity, than urged against the belligerent, who allows only occasional relaxations of the rights of war, and enforces the rule, whenever she finds her bounty abused, or that her convenience demands it.

Having now gone summarily through the arguments used, by the advocates for the extension, during war, of the trade of neuters to articles and places, in which and from which, they were, in time of peace, restricted, it is, if the principle of prior rights be correct, with deference to those who have supported the claim, presumed to be, totally unwarranted either by law, by reason, or by equity.

In the course of the observations I have made, I have necessarily been led to examine, how far Great Britain would be justifiable in exercising that prior right, over the commerce, now existing, between the colonies of her enemies, and the United States. I have also, unavoidably discussed, whether she may not have been concluded by her own acts, and am now carried to the next subject of inquiry, whether we may not have some claim on her, for a relaxation of the measure.

This is a claim of merit, or of favour. By treaty it does not exist. Where then is it to be found? Is it to be seen in the consular court, erected by the French in Charleston, to try and condemn British

vessels?* In the permitting a French privateer to take, carry up a British ship to Philadelphia, the very port of her destination, and there retain her against the British claimants, though captured close in with Cape Henry, after a pilot was on board?† Shall we found our title to peculiar favour, for having in that case denied, even the right to afford to the British the protection of our neutral territory? Is it to the acts of our government that we shall look? To our President's speeches, our non-importation resolutions, or the preamble to the bill brought in for the protection of American sailors? Can we support it on the honest use we have made of our neutral character, or belligerent indulgences; or, do we rest on the facility our laws hold out, to British seamen, to obtain, by the grossest perjury, the security of the American name? How can we complain, that these ill gotten certificates of citizenship, are treated with contempt by the nation, that every day recognises, its own men, under our prostituted garb; in the obtaining of which, our very notaries turn away with disgust at the monstrous falsehoods of the oaths taken to obtain it? If we wish the British to respect our certificates, let us endeavour to maintain them pure. Let every certificate come from under the hand of the minister of the parish where the party was born; let this be sealed, on proof of its being duly signed, with the seal of the county court. To this, add the seal of the state, and then a verification from the custom-house. In cases of naturalization, the seal of the court where the party was naturalized,

* M'Masters, *v.* Shoolbred —† Findlay and others, *v.* ship William, Dis. Court, U. S. in Pensyl. 21st June, 1793.

would, with the custom-house verification, be sufficient. Let us evince a solicitude to be honest, and credit will soon be afforded. It is notorious, to every man concerned in the foreign trade, that our vessels are, in New-York and to the southward, principally, and, in some cases, entirely manned with British subjects; to the eastward the crews are more fair, but even there, a portion of the leaven is still to be found.

Our conduct to other nations, will, I fear, as little entitle us to favour from them, as from Great Britain. I wish not to enter into the criminating detail of all our actions. Miranda's expedition, and the Saint Domingo trade, furnish items of our claims on France and Spain. Let but the hour of peace arrive, bring with it the unshaken power of Bonaparte's throne, and he will, at least endeavour to requite these our neutral deeds. Let it be remembered, that, previous to the last hostilities between France and England, he declared, that, from the very genius of our government, we could not, with safety to the crowns of Europe, be suffered, as a people, to exist. Yet there are among us some, and many, nay the major part of our infatuated citizens, who rejoice over his victories, and mourn over those of the nation under the shade of whose glorious banners we repose. But for whose triumphant navy, we should be brushed from the face of the ocean, and a few thousand French* sent to cleanse our city of British merchants and their adherents.

Would it be supposed, that after such an idea, uttered as a wish, any paper which contained it, should continue the newspaper of the government of any state in the union, a moment longer than it was ne-

* The American Citizen of last Autumn.

cessary to make a change ? Yet it did, and it does so continue ; and if we look to the language of all the government papers throughout the United States, we shall perceive a melancholy but uniform coincidence of sentiment. If we look further, we shall see that these papers, are those of the heads of the ruling parties ; that the ruling parties are the choice of the majority of the people, and that, by a phrenzy that at first appears inexplicable, we seem to cling to our ruin. It is the effect of that Pandora's box, that baneful inebriating gift, the colonial trade. It is this Circean spell that, without bestowing instinct, has stripped us of reason, and changed us into worse than brutes—It may, perhaps, be here not uninstructive to look back on history, and see, whether she can afford one instance, of a commercial republic, being long great, or ever just.

I have now done with our merits. It is, however, singularly unfortunate, that each of the three belligerents, France, Spain, and Britain, pretend to have, against us, just cause of complaint. That we ourselves, alone acknowledge our neutral purity. It would, in private life, afford but a miserable argument of blameless conduct, if every neighbour around a man, should find fault with his behaviour ; if not one should bear testimony in favour of his character and reputation ; and he, against the accusations of all, should have no defence but his own declarations ; yet, with the kingdoms of Europe, this is our very situation.

On the question of the interest of Great Britain, to give effect to the rule of '56, as it has been, very inaccurately, termed, I have no opponents. That is, on all hands, conceded. The doubt, never was, but

as to the right. Appeals, it is true, have been made to her greatness and her pride; to her generosity and her fame; but her interest has never been denied.

In showing it to be her interest, I do not, however, mean to use it as an argument in favour of her title, but as a reason that it should be enforced. Availing myself, as on every other occasion, of all that has been advanced by the author of War in Disguise, and every other author, I shall add some few ancillary motives, which ought, it is conceived, to determine Great Britain to exact, to the utmost, every right war has conferred.

The first arises, from the *lasting* injury an opposite conduct must necessarily induce, to her trade and her manufactures. The second, from the impossibility of preventing the abuse of every relaxation that may be made, and of ever cutting off the resources of revenue derived to her enemies, from their hostile colonies, so long as neuters are allowed to trade in new, and unaccustomed articles.

With respect to the first, it is to be observed, that the *return* cargo, of the vessels employed in the circuitous commerce between the belligerent colonies of France and her dependencies with Europe, through neutral ports, must necessarily consist of the manufactures of those European countries, to which the exported cargo is consigned. The vessel will, therefore, bring back the merchandise of the country to which she has been sent. In the United States, a common descent from the same ancestors, a similarity of manners, and former habits, have given to English goods a decided preference. From hence the tastes of the people, have been, in a great measure,

formed upon them. British woollens, hardware, and a variety of other commodities, have, therefore, generally been in peculiar demand. The mercantile connexions, between Great Britain and the United States, had, moreover, previous to the war between revolutionary France and England, almost superseded every other. English capitals, or at least an English correspondence, was thought necessary to American adventures. But, by the permission of this circuitous trade, the manufactures of France, Holland and Germany, are introduced into the United States, to supply those wants, which, antecedently, British goods alone could satisfy. A part of the population of the Union, consisting of emigrants from the continent of Europe, who have not been long enough habituated to English commodities to acquire a taste for them, return with avidity to their accustomed articles, the produce of their native land. The residue of the people become familiarised with other imports, and lose that predilection for British goods, which in every market it is the interest of the English to maintain.

This effect is already visibly seen both in Philadelphia and New-York. It is becoming daily more extensive. The merchant, too, forms other, or new connexions, and considers the English correspondent, as only one, where he used to be, almost the whole. To accurately trace the influence of all these circumstances is impossible; but that it is widely diffused, and spreading still wider, there can be no doubt.—Thousands of bales of German goods are now sold in various parts of the United States, where, ten years ago, nothing but English manufactures were to be seen. It deserves, therefore, the serious attention of

Great Britain, how far she is willing to thus foster the growth of a commerce, that may eventually stifle her own.

The abuse of every indulgence afforded to neutral colonial trade, our own tribunals, in our various insurance causes, and the archives of the British admiralty, and vice admiralty courts, can sufficiently testify. I could, indeed, particularise, but it is only from general circumstances that I wish to argue. The ingenuity of trade, is universally acknowledged; its honesty is not quite so proverbial. There is no line, between the use, and the abuse of any permission, to possibly be drawn. To prevent the mischief, every relaxation must be tenaciously withheld.

The more extensive and valuable the colonial possessions of Europe become, the more rigidly should the rights of war against colonial trade be enforced. Never, hitherto, I believe, has a toleration of neutral commerce, been supposed by the British, conducive to the direct receipts of her enemy's revenue. Never, I apprehend, till the present war, have belligerent duties been collected, in neutral territories; for, never, till now, have enemies been so desperate, or friends so obsequious.

Under a license from his Catholic Majesty, permitting the marquis of Bedmar and Escalona, to send a certain number of vessels from the United States to Spanish America, Don Julian Hernandez Barusco, purchased the right of dispatching four, adhering to the conditions of the original grant. He entered into a contract with Don Martin Madan, a Spaniard of the Havanna, to share the profits of the adventures. By the terms of this agreement, the duties on the cargoes were, in conformity to the original license, to be

paid to the Spanish consul IN BOSTON, the port from whence the equipments were, by the grant, to clear, in the same manner as if the articles had been shipped from Spain. By a further part of the contract, which was made in Baltimore, the whole of the shipments were to be duly covered, by some RESPECTABLE AMERICAN HOUSE. This contract, is now the subject of a suit in the supreme court of the state of New-York, and may be seen in the records of the clerk's office, set out at full length in the pleadings.

From this single transaction, which I have, from its irrefragable notoriety, selected, it is evident, first, that the duties of the enemies of Great Britain, are, by this permission to trade with the colonies of her adversaries, capable of being collected in America. Secondly, that thus, in effect, the custom-houses of France and Spain, may be established within the United States. Thirdly, that the procuring a RESPECTABLE AMERICAN HOUSE, to cover Spanish property, may constitute an article of mercantile agreement, within this our union. Lastly, that it is very probable, such a clause would never have been introduced, had it been impracticable. There was a ship called the Herkimer, if my memory fail me not, that cleared out from Boston for South America, was taken by the Leander, sent into Halifax; and released on a compromise. Could she, I wonder, have had any connexion with this license of the Marquis of Bedmar and Escalona?

It is not, however, within the United States only, that this facility of collecting the revenues of France and Spain, is afforded by neutral commerce, with colonies hostile to Great Britain. They can, with the

same ease, be received in the colonial ports. It is only necessary to ordain, that when a vessel clears out, with the produce of the colony, she shall, either pay the same duties which would be paid on their entry at the custom-house in the mother country, or give security, in their amount, for their being, within a specified time, duly landed there, the production of a certificate of landing within that time, to be a satisfaction of the bond. This mode has, I am informed, been in some cases adopted, and if generally resorted to, must transmit, to the enemies of Great Britain, the very revenue they would derive from a free, and unembarrassed trade. The remitting of the amount of duties collected, can never be attended with much difficulty ; because, bills of exchange, through America, afford a ready, and what is more, a certain and safe conveyance.

This last circumstance ought to induce Great Britain, when she permits neuters to trade from enemies' colonies, to her own colonial ports, or those of the mother country, to seriously weigh, how far the revenue, or advantage she gains from it, counterbalances the benefit, her opponent derives. It is certain that the whole of her antagonist's resources, from the colonial trade, may be thus remitted ; and though there will, for that purpose, necessarily be, some lapse of time, and a charge on the gross amount, still, an increase of the duties may, perhaps, countervail these effects.

The same principle ought, perhaps, to render Britain peculiarly cautious, how she authorises the reception of bullion from Vera-Cruz, which it is said, some of her frigates, under a permission from the courts of Madrid and St. James are now taking in.—

There was, in the year 1798, a proposition made to the Spanish government, to transmit to Europe all the bullion which might be received at the Havanna.—The idea then was to make a contract with the bank of England for bullion. To send it, in the licensed vessels, to Nassau in New-Providence, and from thence to Great Britain in a king's ship, which there was no doubt of being able to procure. From England the amount to be drawn for, or sent as the Spanish government might direct. The commission to be 15 per cent, leaving, as it cost the Spaniards 20 to insure, a saving of five per cent to the treasury of Spain. The difficulty was, to find persons sufficiently responsible, to warrant confiding to them such immense sums. The scheme therefore fell to the ground. It is said that the present remittances from South America are on account of a Mr. Baring.—Ought not Britain to inquire, whether they are not in consequence of a credit given by the court of Spain for the amount of a simulated purchase of the bullion? and whether it is not going to the Spanish exchequer, under the safeguard of a British man of war, to be transmitted through England to the Spanish government on commission? If so, Great Britain is, in effect, guaranteeing to her adversaries, all the resources of Spanish America.*

On this subject it is for Britain to reflect, and decide. Her decision, on these premises, may be her discretion; but, under the present situation of Europe and the world, it seems to me her duty to interdict.

* A great quantity of specie has, within a few months, been received in the United States, on account of the Spanish government.

The late proclamation of Bonaparte, declaring the British islands in a state of blockade, demands to be promptly met with the most energetic measures. Issued from the midst of a camp on shore; without a ship at sea, that dare look into the offing of an English port; with the remnants of those fleets, that have escaped British destruction, blocked up in their own harbours, and never venturing out, but by stealth, for furtive and predatory attempts on remote colonies; this paper-blockade is a thousand times more absurd than that of Sir John Jervis in the West-Indies. Yet the pliant neuters make no representation against it. They only ask how, his majesty, the Emperor and King, will please to interpret it; and on that interpretation, and no interpretation, the President of the United States implicitly confides.

France has set, to Great Britain, the example of what she ought to do. *Fas est etiam ab hoste doceri.* Great Britain should cut off, from all commercial intercourse, France, and every kingdom and power, dependent on, or connected with her. She should isolate, if I may be allowed the expression, Napoleon on the continent of Europe. She should treat as enemies every nation trading with him, his allies, or dependents. It is in vain to think *his* power will ever be shaken, that is, day by day, nerved with the strength of every part of the globe, administered by neutral means. Away with the dread of increased foes. Better open enmity, than deceitful friendship. Every ill, and more than every accumulated ill of war, is hidden under neutral commerce. Necessity cries out for this imperious measure. Not the necessity of England, but of mankind. It is necessary to starve this devouring monster, whose appetite grows by feeding;

who permits neuters to live, only till he bring them within his grasp; who then seizes, and kills; who already, in his eye, beholds our fields covered with his troops, our cities pillaged, and the department of the United States, a portion of his empire. It is for the security, for the preservation of neuters themselves, that Great Britain should interdict their commerce. To save them from that colossus, who, having crushed Europe with one foot, stands ready to trample on America with the other.

I am well aware, that there is, in what I have uttered, commercial blasphemy: that a denial of neutral rights, to the utmost extent to which neuters themselves, wish to carry them, is, in the mercantile code, an inexpiable sin; that there may be imputed to my positions, not only treason against American interests, but that direful offence, in the present day, of favouring British claims; that I am an advocate for the tyranny of the ocean, and an enemy to the freedom of trade.

If freedom consist in the lawless exercise of unrestrained will, I am the enemy of that freedom. If the tyranny of the ocean be, the enforcing, on the open sea, defined rights, I am the advocate of that tyranny. I am, and I trust I ever shall be, the invariable supporter of legal rights. I am the firm believer, that, on the support of those rights, our welfare depends. Never can I be brought to think, that a violation of right can lead to national prosperity. Never can I think, that the dazzling splendour, which, at times, surrounds successful crimes, is more than the transient gleam of a passing meteor. It is this belief, that has occasioned all I have written. It is the fear lest we should, by sanctioning, for a short lived pro-

fit, moral wrongs, draw down on our guilty heads lasting punishments. It is this that makes me think a War in Disguise, may be justly repelled, by War without Disguise. For it is to the latter, that we ourselves must, for our own preservation, have recourse, whenever our neutral claims shall be lost in belligerent rights. That we may, on some day or other, have such to enforce, is very possible ; nay, almost certain. It is from this consideration, that I have been so solicitous to place on the footing of right, what we owe to others, that we may, when the hour arrives in which it shall be necessary, be enabled to claim it for ourselves. It is then that I shall be the advocate for War without Disguise, against those who dare to infringe on our belligerent title. It is now that I would be the same, against those who violate our neutral rights. It is from a principle of neither offering nor suffering an injury, that I have hazarded the investigation of national rights. For, in either one case or the other, do I think, if reparation be refused, the consequence should be, War without Disguise.

Let us now see the situation in which we should, in case of a war with France or Spain, be placed, while England continued neuter, under the operation of our own principle, of an unlimited right, in neuters, to every species of trade with belligerents, without any restraint, excepting what may arise from blockade and contraband, or their mutual regulations.

Destitute of a maritime force, we could not hope to contend with them, for the palm of naval victory. The same reason would prevent, did our population allow it, all hope of successful invasion. Neither by sea nor by land, could we, through any regular force, make any, the most trifling impression. In what man-

ner then are they assailable? Where can we look for a vulnerable point? It is in their commerce alone, that it is to be found. Our extent of coast, and the activity of our citizens, would cover the face of the ocean with privateers, and expose, in every quarter of the globe, their trade to our depredations. But, if neutral commerce be totally free; if war, by the law of nations, confer on belligerents no supervening rights, how easy is it in a moment to annihilate this, our only resource. Give the neutral British, to and from the ports of our enemies, uninterrupted ingress and egress, and we are left without a single means of offence. Does it require any powers of oratory to depict our then folorn condition? Would Gun Boat No. 1, or the 25,000 dollars lately voted by Congress, defend the city of New-York? Would our surplus dollars, Albert Gallatin's pride, call into active service the mouldering timbers of our seventy-fours? Is there a port that the disembarrassed fleets of France or Spain could not burn, pillage, or lay under contribution?

Let not the improbability of Britain's neutrality, or the distant hostility of France or Spain, be urged as reasons against the case I have supposed. They are not arguments against, but evasions of the supposition. If the results would be what I have stated, they show the danger to ourselves of the doctrine we espouse, and though it may be remote, it is not, on that account, the less inevitable.

It may be said, that if we give up the right of a free, colonial trade with belligerent colonies, under no restraints, but those of blockade and contraband, or

such as the parties themselves may impose, it is present ruin to our mercantile interest, and we must almost cease to exist as a nation. Were the consequences so, if the premises I have laid down be correct, they would not alter my opinion, or in the least, to my mind, vary the conduct we ought to pursue. *Fiat justitia, ruat cælum.* But it is the happiness of virtue never to be followed by ill. Prosperity is the flower with which the God of justice has strewed her paths; and, perhaps, by virtuously relinquishing what we have no right to retain, we should prepare the way to national greatness.

Those who think our mercantile interest demands even a *foreign* trade, must suppose our domestic commerce inadequate to the employment of our own capital; or that superior emoluments are to be derived from exterior adventures. Those who imagine a foreign *colonial* trade, more beneficial than either, or both, must suppose, that the more our domestic capital is employed in foreign voyages, the greater are the final profits.

To combat any of these opinions, so as to leave no room for doubt, would require a volume; my time, and pursuits in life, confine my limits to the mere statement of a few truths, leaving the reasons on which they are built, and their application, to the abilities of those, if there should be any, who may read them.

Foreign trade ought to be the result of a superfluity of population, and of capital. Every country, possessing unsettled lands, has a means of employing, within itself, its own capital. The question still remains, whether it can be, in that manner, so beneficially applied, as in foreign operations.

I will admit that instances do occur, in which larger returns are, in a short time made, from given capitals, when engaged in foreign speculations, than domestic trade ever affords. These instances are, however, but rare, and even then, perhaps, but of individual benefit. For, it is very probable, that, to the United States, no lasting advantage accrues. Fortunes thus rapidly made, are rather borrowed, than acquired. It is not, however, my intention, to write against all foreign trade; though, perhaps, it would not be very difficult to show, that, as we are now circumstanced, it might with greater *national* benefit, be carried on, upon foreign, than domestic capital—All funds employed in foreign trade, must, necessarily replace the foreign capital, that supplies the return cargo; and, on that cargo, leave a profit in the foreign country. When that cargo arrives within our own ports, it replaces our *own* capital—Had it been engaged in domestic trade, it would have benefited two domestic capitals; that of the buyer, and that of the seller. The reason, why the United States, when British provinces, increased, in a ratio, so much beyond that of Great Britain, was, from the operations of our capital being confined to domestic purposes; and from foreign capitalists bringing their funds, to replace with a profit, our capitals. By these means we reserved, within ourselves, all our own funds, and, drew from foreign capitals a certain advantage.

When man, associated with philosophy, assuming his native energies, in search of the blessings of liberty and equality, drove peace from Europe, and, like the curse of God on Israel, scattered the devoted French, over the face of the earth, the influx of

foreign capital, into the union, gave that sudden growth to the United States, the cause of which is more wondered at than known. It is from the profits, on those capitals, that our own have been so greatly augmented.

Whilst occupation can be afforded, to domestic funds, in domestic purposes, the more of foreign capital employed in our trade, the greater will be our emoluments. This principle, every merchant will acknowledge, the moment it is applied to his individual operations. Thus: ask him "if he can "employ, double his present capital?" If he answer, "yes," ask him, "if his profits will then be greater?" and, will he not reply "yes?" Is it not on this plain reason, that, the greater the capital, the greater the profit? If this be true, with respect to the individual, must it not be so, with respect to the nation? Are not, therefore, not only all usages, but even all laws, restraining the employment of foreign capitals, whilst occupation is left for our own, palpable absurdities? This restraint, however, is the certain effect, of all our discriminating, and countervailing acts of congress.

I am sensible, that the arguments I am now using, proceed on tender ground; that they may be said to strike at the root of our trade; that they tend to annihilate our commerce. If these assertions be made of our *foreign* commerce, *on our own capitals*, I grant they are true. But though our *foreign* commerce should not be carried on upon *our own capitals*, it might not, on that account, be annihilated, or less beneficial to national prosperity, or even to public revenue. If every port in the union were free, and a simple duty of one, or one and a half

per cent imposed on all imports and exports, the increase of articles exported and imported, might, perhaps, more than counterbalance the difference in the rate of duties. The competition both for purchases of our own commodities, and for sales of foreign articles would then be in our own ports, between foreigners, instead of being, when we send our capitals abroad, in foreign ports, between our own citizens. As our capitals are small, and demand either large, or quick returns, they would at first be driven into domestic trade. When they had, in this channel, been augmented, so as to equal in magnitude, the foreign capitals, they would be able to endure, with sufficient advantage to the trader, less profits and slower returns. They would then drive out the foreign capitalists, and in the fit and proper time, from our ports, because we could then sell and purchase on equal terms; and a very little more exertion, would qualify us to do so, on better.

If this reasoning be correct in establishing the superior advantage of employing our capital, under our present situation, in domestic purposes, rather than appropriating it to general foreign trade, it will in a more particular manner apply, to the decided preference, it will give, over the foreign colonial trade.

I shall endeavour to exemplify this, by showing the effect 1,000 tons of shipping, employed between the village of Catskill and the city of New-York, will produce; and the quantity necessary to have the same, in the colonial trade.

Catskill possesses about 1,000 tons of vessels, that sail to and from New-York. They, in general, make two voyages a month, for eight months in a year.—

That is, they are adequate to 16,000 tons of shipping employed in one voyage, for eight months. A voyage from hence to the West-Indies, and back again, taking one with the other, in general requires four months; to Europe and back again, if it be performed in six, from the time of loading the first article here, to the time of discharging the last on the return, it is deemed a good voyage. These two voyages, then, require ten months to be once performed, and would demand, on the above calculation, 20,000 tons of shipping, to carry in one voyage of ten months, what 1,000 would be adequate to in 20 voyages, within the same time. Now, as the capital for 20,000 tons of shipping in foreign commerce, may fairly be supposed double what is necessary per ton, for the 1,000 tons in the inland trade; and but one voyage is made in the foreign, where 20 would be performed in the inland, it follows, that the profits on the 20,000 tons, ought to be 40 times greater than those on the 1,000, to merely equal the benefit of one voyage on the river navigation.—Thus, suppose the 1,000 tons to cost 1,000 dollars, and on one voyage 7 per cent is gained, the profits will be 70 dollars. Suppose the 20,000 tons to require 40,000 dolls. at the end of one voyage performed by the 20,000 tons, if the profits be 2,800 dollars, it is not more than what was made, on the 1,000. But as, in the domestic trade, the capital would be turned 20 times, and the profits on each turn would be added to the capital, to make the voyages equal, the profits on the 20,000 tons in the foreign trade, ought to be at least 80 times greater than on the 1,000. If this be multiplied by the number of voyages performed in the river navigation, say 20, it will give 1,600, which ought to be the comparative difference between one voyage on the river, and one in the foreign trade.

Independent of the above disadvantage to be overcome by the extraordinary profits required in foreign commerce, the risk and hazard of the property employed in it, is also to be taken into calculation. This risk and hazard is not confined to merely that which is run, in the prosecution of the foreign trade, but ought to be extended to the possible depreciation of the property, by a peace, or any other circumstance that should render useless the vessels in which it has been invested. We have, already, seen this, adequate to nearly one half.

We should also recollect, that a great portion of even the profits are consumed in foreign countries. That the major part of the charges, such as sailors' wages, &c. are also left in alien ports. It might, perhaps, add greatly to fix the decided preference, due to domestic, over foreign trade, were a calculation made, of the effect, of only the labour of the seamen employed in it, if directed to agricultural purposes; the value of the lands cleared, of those improved, of the population increased, and lastingly augmented produce.

From these considerations, it is, perhaps, the interest of the United States, even in that worst of all lights in which it can be viewed, the mere pecuniary light, that we should abandon this colonial trade; that we ought to wish the energy of an executive, which could issue the proclamation against Capt. Whitby, to endeavour its prohibition, and even to be thankful to that power which should compel us to it, by giving us only the alternative of its dereliction, or WAR WITHOUT DISGUISE.

FINIS.

GAYLORD BROS
MAKERS
SYRACUSE, - N.Y
PAT. JAN. 21, 1908

UNIVERSITY OF ILLINOIS-URBANA
C001
341.3W195
WAR WITHOUT DISGUISE
3 0112 025293876